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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 **CRAIG RICHARD CHANDLER,**

14 Petitioner,

15 v.

16 **SCOTT FRAUENHEIM, Warden,**

17 Respondent.
18

17-cv-00325-EMC

EXHIBITS

19
20 Exhibit 1 State Court Clerk's Transcript¹ (Vols. 1-2)
21
22
23

24 ¹ The prosecution and defense witness lists are omitted because they were filed under seal
25 in state court. The confidential probation report and supplements to the confidential probation
26 report are omitted, except as indicated below, pursuant to California Penal Code § 1203.05. The
27 sealed orders prohibiting contact between petitioner and the minor victims are omitted because
28 they were sealed in state court and disclose the minor victims' names. Respondent has filed a
motion to file under seal transcripts of the video CDs of the interviews of the minor victims and a
letter to the trial court from petitioner's mother which was attached to the confidential probation
report because they were filed under seal in state court but referred to in the state court opinion
and/or the memorandum of points and authorities filed in support of the answer.

EXHIBIT 1

(Vol. 1)

COURT OF APPEAL, STATE OF CALIFORNIA,
IN AND FOR THE SIXTH APPELLATE DISTRICT

THE PEOPLE,

V.

CRAIG RICHARD CHANDLER

PLAINTIFF AND
RESPONDENT,

DEFENDANT AND
APPELLANT.

COURT OF APPEAL NO.: H040429

VOL. 1 of 7

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CLERK'S TRANSCRIPT

CLERK'S TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA.

SUPERIOR COURT NUMBER: C1223754

HONORABLE ARTHUR BOCANEGRA, JUDGE

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NOTICE OF APPEAL FILED November 22, 2013

NOTICE OF COMPLETION JAN 29 2014

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In the Superior Court of the State of California
In and for the County of Santa Clara



The People of the State of
California,

Plaintiff,

vs.

Craig Richard Chandler,

Defendant(s).

Case No. C1223754

Reporter's Transcript of Proceedings

May 21, 2012

Before the Honorable Michele McKay McCoy

Preliminary Examination

Volume I of III

Pages 1 through 180

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FILED

JUL 04 2012

DAVID H. VAN GAKI
Superior Court of California
County of Santa Clara
BY: [Signature] DEPUTY

JUN 13 2012

DENISE NEBOLON, CSR #9344, OFFICIAL COURT REPORTER

1

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1 May 21, 2012

2 P R O C E E D I N G S

3 THE COURT: We're on the record in the case of
4 People versus Craig Richard Chandler. Please state
5 your appearances for the record.

6 MS. FILO: Good morning, Your Honor, Alison
7 Filo appearing for the People. Seated next to me is
8 our investigating officer, Sean Pierce, P-I-E-R-C-E.
9 And I would so designate him at this time.

10 MR. SCHUMB: Chris Schumb. Mr. Chandler is
11 present and sitting next to me. Also representing him
12 is Mr. Clark. He's out to do an arraignment across the
13 hall.

14 THE COURT: Is there a motion to exclude
15 witnesses?

16 MS. FILO: Not by the People.

17 MR. SCHUMB: Um, let me confer with Mr. Clark
18 on that.

19 THE COURT: All right, just a moment. Is
20 there a motion to exclude witness from the defense?

21 MR. SCHUMB: Yes, Your Honor.

22 THE COURT: That will be granted. All the
23 witnesses except the witness who is testifying at the
24 time are excluded.

25 Please call your first witness.

26 MR. CLARK: Your Honor, I wanted to make a
27 record on something that occurred in Department 24.

28 THE COURT: Please.

1 MR. CLARK: I had, defense has subpoenaed a
2 number of people to court. Um, we worked out standby
3 agreements with the civilians. But with respect to the
4 police officers, I'd like to make a record of who I
5 subpoenaed and that they were not present. Hopefully
6 we will resolve this issue later. Officer Perez, Badge
7 3920, Officer Badal, Badge 3904, Officer Natividad,
8 Badge 3877.

9 THE COURT: Would you spell that.

10 MR. CLARK: N-A-T-I-V-I-D-A-D. Officer Pierce
11 I see here. And also, and I believe you're calling
12 Officer Chubon we did subpoena, although he didn't
13 answer up. With respect to the police officers that
14 were not present, I just want to make a record we
15 subpoenaed them. They were not here. No one
16 answered. I suppose I'll deal with the issue later. I
17 just wanted to make a record.

18 MS. FILO: I guess I would point out to the
19 court and point out to counsel the defense has no right
20 to subpoena witnesses to a preliminary examination
21 unless those witnesses are going to provide an
22 affirmative defense or poke holes at the probable cause
23 offered by the People. But unless it's going to be an
24 affirmative defense, I don't think there is any
25 colorable argument that any of the police officers
26 would actually provide the defendant with an
27 affirmative defense.

28 That said, they have all been notified by the

1 People. I believe that they are all on telephone
2 standby. Witnesses were horribly confused by getting
3 multiple subpoenas. It was a little bit of a mess and
4 I believe we have everybody we need for the prelim for
5 probable cause. I have yet to receive any notice that
6 there will not an affirmative defense.

7 THE COURT: I understand the impeachment and
8 affirmative defense. The appropriate time to have this
9 discussion is at the closing of the People's case
10 before the beginning of the defense case.

11 All right, thank you. Would you call your
12 first witness please.

13 MS. FILO: Yes, Your Honor. The People call
14 the victim identified in count number two. And for the
15 record we will refer to her as B.

16 THE COURT: B., as in?

17 MS. FILO: B., as in boy.

18 THE COURT: Thank you.

19 Ms. B., would you come up and stand right here
20 please. Face the clerk. That's Ms. Avalos. And raise
21 your right hand.

22 Yes, that's the right hand.

23 B.:

24 COURT CLERK: Do you promise that what you
25 tell us here today is the truth and nothing but the
26 truth?

27 THE WITNESS: Yeah.

28 COURT CLERK: Thank you. Go ahead and have a

1 seat.

2 THE COURT: We've put a pillow there in case
3 you need it. And, I know, it's like on American Idol.
4 You have to use the microphone all the time. We need
5 it because it's a really big room and we need to talk
6 into the microphone so everybody can hear.

7 Now, someone is with you in court today, a
8 support person. Who is that?

9 THE WITNESS: My counselor.

10 THE COURT: This is a good test. Can you
11 speak into the microphone?

12 THE WITNESS: She's like something. I don't
13 really remember.

14 THE COURT: All right. I'll ask the lady to
15 identify yourself.

16 SUPPORT PERSON: Ann Burde. I'm her
17 counselor.

18 THE COURT: All right. Spell your last name.

19 SUPPORT PERSON: B-U-R-D-E.

20 THE COURT: Thank you, Ms. Burde. I'm going
21 to move this out of the way. This courtroom is full of
22 things we don't use very much, and it blocks my vision.

23 All right. Um, the attorneys are going to ask
24 you questions, and I might have some questions. You
25 already know to tell the truth. If you don't
26 understand the questions, it's okay to say, I don't
27 understand the question, please ask it again, please
28 ask it a different way.

1 Sometimes the attorneys might get something
2 all wrong or I might get it all wrong. Even though
3 you're a kid and we're adults, it's okay to correct
4 us. You can say that's wrong. You're allowed to do
5 that. Thank you.

6 Go ahead please.

7 MS. FILO: Thank you.

8 DIRECT EXAMINATION

9 BY MS. FILO:

10 Q. High, B., Do you remember, um, do you
11 remember what I do, what my job is?

12 A. You're a lawyer.

13 Q. A lawyer, okay, great. So do you remember
14 that I need to ask you a few questions this morning?

15 A. Yeah. Yes.

16 Q. And you remember the rule that you have to
17 tell the truth, right?

18 A. Yes.

19 Q. Good job. The only other real rule we have is
20 one that you're doing really good at. And that is that
21 you have to use real words. Do you remember that rule?

22 A. Yes.

23 Q. We talked about that rule a little bit?

24 A. Yes.

25 Q. And I said you either need to say things like
26 "yes" or "no" or "I don't know." Remember that?

27 A. Yeah.

28 Q. Because if you don't, then this nice lady

1 doesn't know what to type out, okay? Can you do that?
2 A. Yes.
3 Q. Yes, all right. So the microphone's right
4 here. So you're going to talk right into that, all
5 right? Okay. B., what grade are you in right now?
6 A. Third grade.
7 Q. Third grade. And do you know when you started
8 the third grade? When does your school year start?
9 A. I guess 18th.
10 Q. Sorry?
11 A. 18th.
12 Q. The 18th. Do you know what month it usually
13 starts?
14 A. August.
15 Q. Very good. So it starts in August. When you
16 started the third grade in August, who was your
17 teacher?
18 A. Mr. Chandler.
19 MS. FILO: Counselor, is there a stipulation
20 to identification?
21 MR. SCHUMB: Yes.
22 THE COURT: All right, thank you.
23 BY MS. FILO:
24 Q. Um, B., when you started the third grade, you
25 were assigned to Mr. Chandler. Do you remember which
26 classroom that was in?
27 A. Room 18.
28 Q. Room 18. What school did you go to in August

1 of this year when you started third grade?
2 A. O.B. Whaeley.
3 Q. O.B. Whaeley, right?
4 A. Yeah.
5 Q. W-H-A-E-L-E-Y-; is that correct?
6 A. Yes.
7 Q. Good job. Okay, when you started in the third
8 grade, what kind of stuff were you doing in school?
9 What do you do when you start the third grade? That
10 seems like a big grade. Were you doing math? What
11 kind of math problems do you do in third grade?
12 A. I don't remember.
13 Q. Were you doing, were you doing multiplication
14 tables?
15 A. I think so.
16 Q. Like two times three and four times five?
17 Were you doing problems like that in math?
18 A. I might be.
19 Q. You might be or you were?
20 A. I think that's different grades.
21 Q. What?
22 A. The three in multiplications.
23 Q. Oh, the threes. You got to the threes.
24 A. But then Ms. Llegos said I got to the 12.
25 Q. Wow, that's great. So you can do all of your
26 multiplication tables in third grade?
27 A. Yes, but it's higher than me.
28 Q. Some people can go higher in the numbers than

1 you?

2 A. She's the only one, the highest one in the
3 class.

4 Q. You did all your tables in the third grade?

5 A. Hm-hmm.

6 Q. Good for you. And do you do reading at
7 school?

8 A. Yes.

9 Q. What's your favorite? Do you have a favorite
10 series of books? What do you like to read? Do you
11 like Magic Tree House?

12 A. No.

13 Q. Judy B. Jones?

14 A. No. Abbey Hayes.

15 Q. Abbey Hayes. That's a good one too. So, B.,
16 when we're talking in court today, I want to make sure
17 that we only talk about things that really happened.
18 So if I say, B., did you learn your multiplication
19 tables in third grade, you would say?

20 A. Yes.

21 Q. Yes, Ms. Alison, I did, right? If I said, B.,
22 do you know how to do -- could you read, um, could you
23 read the whole dictionary from beginning to end? Did
24 you do that in the third grade?

25 A. No.

26 Q. That didn't really happen, did it? So if it
27 didn't really happen, I want you to say, Ms. Alison,
28 that's not what happened. Can you do that?

1 A. Yes.

2 Q. We're only going to talk about things in court
3 that really happened, okay? Can you do that?

4 A. Yeah.

5 Q. That will be our deal, all right?

6 A. Okay.

7 Q. So, B., I want to ask you about some of the
8 things that you would do in Mr. Chandler's class, okay?

9 A. Okay.

10 Q. Can you tell me something that you did in
11 Mr. Chandler's class that was really fun and everybody
12 in the class did that was really fun?

13 A. I don't remember.

14 Q. You don't remember anything really fun? Did
15 you ever play, um, did you play a game like Candyland
16 or Monopoly or anything like that?

17 A. (Shakes head.)

18 Q. What was your favorite thing to do in
19 Mr. Chandler's classroom?

20 A. I don't really remember about that.

21 Q. You don't remember your favorite thing to do?

22 A. (Shakes head.)

23 Q. No? Did you have recess at Mr. Chandler's
24 classroom?

25 A. Yes.

26 Q. And did you have lunch time?

27 A. Yes.

28 Q. Those are fun things, aren't they?

1 A. Nuh-uh.

2 Q. Why not?

3 A. I just like to hang out with my friends.

4 Q. You like to hang out with your friends?

5 A. Yeah.

6 Q. Do you get to do that mostly at recess?

7 A. And lunchtime.

8 Q. Lunchtime. I want to ask you, did you ever
9 play a game with Mr. Chandler at recess?

10 A. No.

11 Q. You don't remember? Or, no, you didn't?

12 A. No.

13 Q. You have to tell me which one it was.

14 A. I think it was no. I never.

15 Q. You never played a game with Mr. Chandler at
16 recess?

17 MR. SCHUMB: Your Honor, I believe that's
18 leading and overly questioning the witness. The same
19 question's been asked. I just object. I don't want to
20 say harassing, but it's been asked three times.

21 THE COURT: Leading questions are allowed for
22 juvenile witnesses. I'll allow it, particularly
23 because nonleading questions were tried first. But if
24 you can keep it to a minimum, I would appreciate it.

25 MS. FILO: Thank you.

26 THE COURT: B., when that happens, I'm like an
27 umpire. I call balls and strikes. You're not doing
28 anything wrong, it's just me deciding how the rules

1 work. That's what I do.
2 Go ahead.
3 MS. FILO: Thank you.
4 BY MS. FILO:
5 Q. Okay. So did you play a game with
6 Mr. Chandler at recess?
7 MR. SCHUMB: Objection, asked and answered.
8 THE COURT: Overruled.
9 THE WITNESS: Yes.
10 BY MS. FILO:
11 Q. Yes? Tell me what game you would play with
12 Mr. Chandler at recess.
13 A. I don't know what it's called.
14 Q. Okay. Can you describe the game for me? What
15 did you do during the game?
16 A. I don't remember about that.
17 Q. Okay. What do you remember about the game?
18 A. That you had to close your eyes.
19 Q. What else?
20 A. I don't know.
21 Q. Where did you play the game with Mr. Chandler?
22 A. In the classroom.
23 Q. Who was there when you played the game with
24 Mr. Chandler?
25 A. Nobody.
26 Q. Just the two of you?
27 A. Hm-hmm.
28 Q. And you said that it was during recess, right?

1 A. Yes.

2 Q. You said that you closed your eyes. Did
3 anything happen so you wouldn't see?

4 A. He used a blindfold.

5 Q. A blindfold. Okay, tell me about the
6 blindfold.

7 A. It was blue.

8 Q. Blue?

9 A. I could see green. I could mainly see green.

10 Q. What kind of a blindfold was it? Tell me
11 about the blindfold. You said the color, but what it
12 was like.

13 A. It was just like a regular blindfold.

14 Q. Did it have a tie in the back or did it tie on
15 your head?

16 A. A regular tie.

17 Q. A regular tie?

18 A. And a regular blindfold like a regular one
19 like other people use.

20 Q. It was in the classroom?

21 A. Hm-hmm.

22 Q. Where was it in the classroom, do you
23 remember?

24 A. No.

25 Q. No. When you came -- how did you come in from
26 recess to play the game? How did that happen?

27 A. Um, one of the classmates called me in.

28 Q. One of your classmates called you in?

1 A. Hm-hmm.

2 Q. What was your classmate's name, do you
3 remember?

4 A. Michaela, I think.

5 Q. What did Michaela say to you?

6 A. She just said come into the classroom.

7 Q. And you went back into the classroom?

8 A. Yes.

9 Q. Where did you go in the classroom?

10 A. I don't remember about that.

11 Q. Did Mr. Chandler have his own desk?

12 A. Yes.

13 Q. Were you close to his desk when you played the
14 game?

15 A. I think so.

16 Q. How close to his desk were you?

17 A. I think a little bit near.

18 Q. Was there something on the other side of
19 Mr. Chandler's desk?

20 A. I don't remember.

21 Q. If I showed you a picture, would that help
22 maybe if you could see what the classroom looked like
23 in October? Would that help, do you think? I know,
24 that's a long time ago.

25 A. Okay.

26 Q. Let me see if I have a picture for you.

27 Your Honor, if I could have marked first in
28 order.

1 THE COURT: Have you shown it to defense
2 counsel?

3 MS. FILO: Yes. They've already seen it.
4 (People's Exhibit 1 is marked.)

5 BY MS. FILO:

6 Q. B., I'm going to show you what's been marked
7 as Exhibit 1.

8 MR. SCHUMB: I need an exhibit to follow along
9 with, so can I just see the exhibit a minute?

10 THE COURT: Sure.

11 MR. SCHUMB: Can I approach just to observe
12 because I think she's going to ask her questions about
13 the photo. I won't be able to see the witness point to
14 the photo. Kind of up there?

15 THE COURT: Well, I'm sure that if you can do
16 it in a way that displays. Do you also want to use the
17 field camera? Let's try it the old-fashioned way
18 first.

19 MS. FILO: No.

20 BY MS. FILO:

21 Q. B., I'm going to show you a picture. Do you
22 recognize what's in that picture?

23 A. Yes.

24 Q. What is that?

25 A. A desk.

26 Q. A desk. Is that what Mr. Chandler's classroom
27 looked like when you started third grade?

28 A. Not here.

1 Q. Not where the desk is where the papers are?
2 A. (Nods head.)
3 Q. How the desk is, is that where Mr. Chandler's
4 desk was?
5 A. I think so.
6 Q. How about this cabinet back behind, do you
7 remember this cabinet back behind the desk?
8 A. Yes.
9 Q. Is that how it was set when you were in the
10 third grade with Mr. Chandler?
11 A. Yeah. I think.
12 Q. When you played the game with Mr. Chandler,
13 where did you go? Where did you go? Where around --
14 you said you were near his desk. Kind of where were
15 you?
16 A. That was here and that was like here.
17 MS. FILO: Okay. The witness has pointed
18 about what would project out to be about two feet?
19 THE WITNESS: I think there's a desk here.
20 THE COURT: The witness is referring to the
21 lower right hand corner of the photograph.
22 MR. SCHUMB: I can't see the pen marks.
23 MS. FILO: I'm not making pen marks.
24 THE COURT: That's why any testimony, I'll
25 keep translating what the witness is doing and which
26 part of the photograph she's pointing to.
27 BY MS. FILO:
28 Q. So, B., this area in the lower right hand

1 corner of the photograph; is that right?

2 A. Right here. That's here.

3 THE COURT: The witness is pointing to the
4 lower right hand corner of the photograph.

5 BY MS. FILO:

6 Q. B., that's where you played the game in the
7 classroom?

8 A. Yes. But there might be a desk here.

9 Q. So there might have been another desk here by
10 the desk that's in the picture?

11 A. Yes.

12 THE COURT: And when B. says, "here," she's
13 pointing to the lower right hand corner of the
14 photograph.

15 BY MS. FILO:

16 Q. The very, very first time that you played the
17 game, what did you do? Where were you, were you
18 standing, sitting, or lying down? Tell me what you
19 were doing.

20 A. I don't remember.

21 Q. Okay. B., do you remember talking to a police
22 officer in January of this year?

23 A. I think so.

24 Q. Do you remember talking to Officer Sean right
25 there?

26 A. I think it was the other officer.

27 Q. Yeah?

28 A. The other one.

1 Q. Maybe there was another officer too?
2 A. (Nods head.)
3 Q. Do you remember talking to this officer right
4 here?
5 A. Yes.
6 Q. Yes, okay. When you talked to Officer Sean,
7 was he nice to you?
8 A. Yes.
9 Q. And where did you talk to him? Do you
10 remember where you went to talk to him?
11 A. Somewhere, but I don't remember where.
12 Q. Can you describe the, where you were? Can you
13 describe the room for me? What was it?
14 A. It was like a children's room.
15 Q. Did it have pictures on the wall and stuff?
16 A. I don't remember, but there was stuff to do in
17 there.
18 Q. There was stuff to draw with?
19 A. I don't think there was drawing books.
20 Q. Okay.
21 A. There was. There was.
22 Q. Do you remember doing some drawings when you
23 were sitting there with Officer Sean?
24 A. I was coloring. I wasn't drawing.
25 Q. Sorry, sometimes I get those things confused.
26 So when you went to go talk to Officer Sean in that
27 little children's room, did you talk to him about a
28 time where the very first time you played the game with

1 Mr. Chandler? Do you remember talking to him about the
2 very first time you played the game with Mr. Chandler?

3 A. I don't remember.

4 Q. Do you remember telling Officer Sean that the
5 very first time you played the game with Mr. Chandler,
6 you lay down and Mr. Chandler covered your face with a
7 blindfold and a blanket too?

8 MR. SCHUMB: Objection, lacks foundation,
9 misstates the testimony.

10 THE COURT: Overruled.

11 Did you understand the question?

12 THE WITNESS: Yes, but I don't remember about
13 that.

14 THE COURT: Okay.

15 BY MS. FILO:

16 Q. So you don't remember that happening or you
17 don't remember saying that to Officer Sean?

18 A. I don't remember that happening.

19 Q. You don't remember that happening?

20 A. (Shakes head.)

21 Q. Okay. Um, do you remember, um, tell me what
22 you do remember about the game. Let's start with
23 that. You told me about a blindfold. And then what
24 happened once there was a blindfold?

25 A. He put candy in my mouth.

26 Q. What kind of candy?

27 A. I forgot.

28 Q. How many times did you play the game with

1 Mr. Chandler where he blindfolded you and put something
2 in your mouth?

3 A. I don't know.

4 Q. Can you estimate for me? Do you know what
5 that means?

6 A. Yes.

7 Q. Can you give me your best, best estimate?
8 About how many times?

9 A. It might be three.

10 Q. Three times? So you don't remember? You
11 don't remember ever lying down on the floor in
12 Mr. Chandler's classroom?

13 A. I don't remember.

14 Q. Okay.. When you said that he put candy in your.
15 mouth, were you blindfolded when he put something in
16 your mouth?

17 A. I think so.

18 Q. How do you know it was candy?

19 A. Because it kind of felt like caramel.

20 Q. Felt like caramel? When he put something in
21 your mouth, do you remember the very, very first time
22 that that happened?

23 A. (Shakes head.)

24 Q. No?

25 A. No.

26 Q. Where were you in the room the very first time
27 that he put something in your mouth? Can you tell me
28 where you were?

1 MR. SCHUMB: Objection, Your Honor, lacks
2 foundation.

3 THE COURT: Sustained. Rephrase.

4 BY MS. FILO:

5 Q. You said that you remember playing the game
6 where he put a blindfold on you and put something in
7 your mouth. Do you remember that?

8 A. Yes.

9 Q. Where were you when that happened?

10 A. I think it was the same place.

11 Q. Right there kind of in front of his desk in
12 the lower right hand side of this picture?

13 A. Yes, but like near that desk.

14 Q. There was another desk again in that lower
15 right hand corner?

16 A. No, right here.

17 THE COURT: The witness is pointing to the
18 lower right hand corner.

19 BY MS. FILO:

20 Q. Were you standing up or sitting down?

21 A. I think I was sitting down.

22 Q. Where were you sitting?

23 A. Maybe it was a chair.

24 Q. What kind of chair was it?

25 A. Like that chair.

26 Q. So there's a chair that's in the, attached to
27 a child's desk?

28 THE COURT: You're pointing to the lower left

1 hand corner.

2 BY MS. FILO:

3 Q. Right where this little blue box is?

4 A. I don't think it was that chair.

5 MR. SCHUMB: Your Honor, I can't see. I think
6 this, could we use the overhead so we can see what's
7 going on?

8 THE COURT: Could you try displaying the
9 photograph towards the audience so that everybody can
10 see it and not just the witness.

11 BY MS. FILO:

12 Q. There's just this little blue box here,
13 correct?

14 A. Yes.

15 Q. Is that a pencil box or something for the
16 student?

17 A. Hm-hmm.

18 Q. You said there's a chair back here in the
19 student's desk, right?

20 A. No. It was like this chair.

21 Q. It was kind of like that chair?

22 A. Yes.

23 Q. When you say it was kind of like that chair,
24 what do you mean? Did the chair --

25 A. It was that chair, but a different kind of
26 chair.

27 Q. It looked like that chair?

28 A. But it's different.

1 Q. What was different about it? Tell me what was
2 different about the chair.

3 A. It was like somebody's house, but not that
4 chair.

5 THE COURT: The witness is indicating the
6 lower left hand corner of the photograph.

7 BY MS. FILO:

8 Q. Did Mr. Chandler have a chair in the
9 classroom? Do you remember?

10 A. Yes, but bigger.

11 Q. His was a little bit bigger?

12 A. (Nods head.)

13 Q. "Yes"?

14 A. Yes.

15 Q. Were there any chairs in the classroom that
16 could turn, swivel? Do you know what that means?

17 A. Yes. I don't think so.

18 Q. You don't remember? You don't think there
19 were any chairs like that?

20 A. I don't think so. I think there was one.

21 Q. Did you ever play the game in that chair, the
22 one that turns?

23 A. Never.

24 Q. Okay. You said that, when you played the
25 game, that Mr. Chandler would put candy in your mouth.
26 Did he ever put anything, other than candy in your
27 mouth?

28 A. The chocolate.

1 Q. Chocolate. Anything else?

2 A. Don't think so.

3 Q. B., do you remember telling, um, Officer Sean
4 that Mr. Chandler put something in your mouth that was
5 round? In fact, you even, do you remember holding up
6 your hand and making a round, like this [sound]? You
7 don't remember doing that?

8 A. I don't remember.

9 Q. Did that ever happen?

10 A. I don't remember.

11 Q. So you don't remember whether or not
12 Mr. Chandler put something in your mouth that was kind
13 of round?

14 A. Yes.

15 Q. And do you remember telling Officer Sean that
16 the round thing went all the way back in your mouth?
17 And you even used your hand to kind of show what it was
18 like.

19 A. I don't think it was all the way back.

20 Q. Can you tell me what it was like?

21 A. It was near, but not all the way back.

22 Q. Not all the way back? Was it something that
23 was round?

24 A. I think. I thought. I don't know because I
25 was like blindfolded. I thought it was round. I don't
26 know.

27 Q. Do you know how big it was?

28 A. Nuh-uh.

1 Q. "No"?

2 A. No.

3 Q. Do you remember, um, if it was, was it bigger

4 than my pen?

5 A. I don't know.

6 Q. Don't know?

7 A. (Shakes head.)

8 Q. And you don't -- do you remember telling

9 Officer Sean that it was about as big as [sound], you

10 made a little circle with your thumb and your

11 forefinger?

12 MR. SCHUMB: Objection, ambiguous.

13 THE WITNESS: I don't know.

14 THE COURT: Did you understand the question?

15 THE WITNESS: Yes.

16 THE COURT: Okay, you can answer it.

17 BY MS. FILO:

18 Q. You don't remember telling Officer Sean that

19 it was about that big [sound]?

20 A. I think I said that, but I don't remember.

21 Q. You think you said that?

22 A. I think.

23 Q. Okay.

24 A. It was a long time ago.

25 Q. It was a long time ago?

26 A. Yes.

27 Q. Um, B., when the round thing was in your

28 mouth, did anything come out?

1 A. I think it was something salty.
2 Q. Something salty came out. What was the salty
3 thing like?
4 A. Gooney.
5 Q. That's a good description, okay. Um, did it
6 come out of the round thing?
7 MR. SCHUMB: Objection, misstates the
8 testimony, leading.
9 THE COURT: Sustained. Could you rephrase
10 please.
11 BY MS. FILO:
12 Q. Did the gooey salty stuff come out of the
13 round thing?
14 MR. SCHUMB: Same objection.
15 THE WITNESS: I think.
16 BY MS. FILO:
17 Q. You think, okay. Did the gooey salty stuff
18 get anywhere? Did it get anywhere on your skin or on
19 your clothes or anything like that?
20 A. I think it was only my clothes, not on my
21 skin. Only on my hands.
22 Q. Your hands a little bit?
23 A. Yes.
24 Q. You think maybe it went on your clothes.
25 Where did it go on your clothes?
26 A. I think it was like my pants and something
27 around here.
28 THE COURT: When you say, "here," where are

1 you pointing?

2 THE WITNESS: Right here, near right here.

3 THE COURT: I see you're pointing --

4 THE WITNESS: Near my chest.

5 THE COURT: On your upper chest, I see. Thank
6 you.

7 BY MS. FILO:

8 Q. The gooey salty stuff got on your hands and a
9 little bit on your pants?

10 A. Yes.

11 Q. I want to make sure I got it right. Did you
12 hear any noises when that round thing was in your
13 mouth?

14 A. I think I hear keys.

15 Q. Keys?

16 A. (Nods head.)

17 Q. What happened after that gooey salty stuff
18 came out?

19 A. It was like really -- I don't get it.

20 Q. You don't get my question? That's good.
21 After the gooey salty stuff came out, you said there
22 was a little bit on your jacket and your pants?

23 A. Yes.

24 Q. How did you clean it up? What did you do?

25 A. I took a napkin with water and cleaned it off
26 my pants.

27 Q. Did you do that or did Mr. Chandler do that?

28 A. Mr. Chandler did some and I did some of it.

1 Q. Where did you go in the, did you stay in the
2 classroom to clean up?

3 A. Yes. In the sink.

4 Q. That was on the other side the classroom,
5 right?

6 A. Yes.

7 Q. So did you take your blindfold off after the
8 gooey salty stuff came out?

9 A. I don't remember.

10 Q. When you were cleaning up, you had the
11 blindfold off; is that right?

12 A. Yeah. I think.

13 Q. Because you could see where the stuff was?

14 A. Yeah.

15 Q. Okay. So, B., how many times do you remember
16 playing the game where Mr. Chandler put something in
17 your mouth and the gooey salty stuff came out?

18 A. Three.

19 Q. Three times about? Okay. Do you remember
20 what color the gooey salty stuff was?

21 A. Crystal clear.

22 Q. So, B., how did you feel when you were playing
23 the game with Mr. Chandler? Did you like the game?

24 A. Nuh-uh.

25 Q. "No"?

26 A. No.

27 Q. Why not? What did you not like?

28 A. Because I was using a blindfold.

1 Q. And did you think it was a good game to play?

2 A. Nuh-uh.

3 Q. "No"?

4 A. No.

5 Q. Did Mr. Chandler ever tell you why you were
6 playing the game?

7 A. He said it was like a science experiment.

8 Q. Okay. And you said you played the game about
9 three times and that you didn't like it. So what did
10 you do? Did you tell anybody about the game?

11 A. I don't think so.

12 Q. Did you tell your mom at some point?

13 A. Yeah.

14 Q. What did you tell your mom?

15 A. Something about that game, but I forgot what I
16 said.

17 Q. Did you tell your mom I don't like this game?

18 A. Yeah, I think I did, but I don't remember if I
19 said that if I don't like it.

20 Q. Okay. B., um, have you talked to anybody,
21 other than your mom and to Officer Sean about, um --

22 A. I talked to another policeman too.

23 Q. You talked to other policemen?

24 A. (Nods head.)

25 Q. Other than that, have you talked to anybody
26 else about the game?

27 A. I think my mom told a little bit to my dad.

28 Q. Just your family?

1 A. Yes.

2 Q. Have you talked to your friends at school
3 about the game?

4 A. No. But my mom told one of her friends
5 because she doesn't know what to do.

6 Q. You haven't talked to anybody, other than your
7 mommy and your daddy and the policemen?

8 A. Hm-hmm. And my mom talked to one of her
9 friends because she doesn't know what to do about that
10 because, when I told my mom, she said, oh, my God.
11 Then she kind of called her friend so then the next day
12 I think they took something.

13 Q. Okay. Why did you think, why did you think,
14 hey, I need to talk to my mommy about that?

15 A. Because I don't think it was fun and I don't
16 think it was -- I don't think it was -- I think it was
17 inappropriate.

18 Q. You think it was inappropriate?

19 A. (Nods head.)

20 Q. Did it make you feel bad to play the game?

21 A. Yes.

22 Q. Okay. So you thought you need to tell an
23 adult about this.

24 A. Yes.

25 Q. Good for you.

26 A. Because I tell everything to my mom, but not
27 my dad.

28 Q. Not always your dad, okay. Did you tell

1 anybody at the school about what had happened?

2 A. No.

3 Q. Did you ever talk to the principal at the
4 school?

5 A. My mom, but not me.

6 Q. You didn't talk to the principal?

7 A. Oh, yeah, I did.

8 Q. You did a little bit?

9 A. My mom did too.

10 Q. Tell me about that?

11 A. It was like a whole day about it.

12 Q. So you talked to, do you remember what the
13 principal's name was?

14 A. Ms. V.

15 Q. Ms. Vijayendran, V-I-J-A-Y-E-N-D-R-A-N. You
16 called her Ms. V. sometimes?

17 A. Yeah.

18 Q. That's a long name for a second grader. You
19 went and talked to Ms. V.?

20 A. Yes.

21 Q. "Yes"?

22 A. Yes.

23 Q. Did you tell Ms. V. everything you could
24 remember about the game?

25 A. Yes, but then, when she went somewhere else,
26 when she went to the hospital, Ms. V., then Ms. Peery
27 was the other one.

28 Q. So Ms. V. went to the hospital because she had

1 a baby, right?

2 A. Yes. And I think Ms. Peery was the one who
3 like bringed the officer.

4 Q. Who brought the officer?

5 A. (Nods head.)

6 Q. Did you talk to Ms. V. before you talked to
7 the policeman?

8 A. I talked to Ms. V. first.

9 Q. Okay. And when you talked to Ms. V., did you
10 end up going to another classroom so you weren't going
11 to be in Mr. Chandler's classroom anymore?

12 A. Yes.

13 Q. That happened after you talked to Ms. V.?

14 A. Like in the afternoon.

15 Q. Okay. And then after that, you didn't go back
16 to Mr. Chandler's classroom?

17 A. No.

18 Q. How long -- do you remember how long you were
19 in the other classroom it was before you talked to the
20 police officers?

21 A. I think it was like in October.

22 Q. Wow, you have a good memory. Okay. All
23 right. And then you talked to the police officers, did
24 you talk to the police officers after Christmas? Or
25 you're not sure?

26 A. I'm not sure.

27 Q. Okay. Okay, B., getting pretty close here.
28 You said that you played the game about three times?

1 A. Yes.

2 Q. Where the gooey salty stuff came out?

3 A. Hm-hmm.

4 Q. Was it the same every time? Did the same
5 things happen?

6 A. The gooey stuff did, but not the candy and
7 chocolate.

8 Q. When did that happen?

9 A. And some mints.

10 Q. When was that? Was that before the gooey
11 salty stuff or after the gooey salty stuff?

12 A. I don't remember.

13 Q. Okay. But the candy and the chocolate, that
14 only happened one time?

15 A. It happened all the time.

16 Q. Every time you played the game, there was some
17 candy or some chocolate?

18 A. Yes.

19 Q. Okay. Was the candy or the chocolate you --
20 you said you didn't remember whether it was before or
21 after the gooey salty stuff?

22 A. Yeah. I think it was the candy first, and
23 then the chocolate, and then the gooey stuff.

24 Q. B., did you ever see anything through the
25 blindfold?

26 A. Nuh-uh.

27 Q. You don't really know what Mr. Chandler was
28 putting in your mouth?

1 A. No. I just felt it.
2 Q. Do you know what it felt like?
3 A. Hm-hmm.
4 Q. What did it feel like?
5 A. Candy and other gooey stuff.
6 Q. What other kind of gooey stuff was it?
7 A. I think it was that green stuff.
8 Q. Tell me about what the thing felt like that
9 the gooey stuff came out of. What did it feel like?
10 A. Water.
11 Q. It felt like water?
12 A. (Nods head.)
13 Q. You said that it was kind of a round thing and
14 that the gooey stuff came out.
15 A. No. Like it was a man thing in the mouth, I
16 think, and then it was like water came out.
17 Q. Okay.
18 A. A second.
19 Q. I see. So the watery stuff came out of the
20 round thing?
21 A. Yes.
22 Q. Okay, I got it now.
23 A. Salty water.
24 Q. So salty watery stuff came out while the thing
25 was still in your mouth?
26 A. Yeah.
27 Q. What did the thing feel like before the salty,
28 watery stuff came out? Do you remember what the thing

1 felt like?

2 A. Can you repeat that again?

3 Q. Yeah. So, um, the thing that was in your
4 mouth that the salty watery stuff came out of, what did
5 that thing feel like?

6 A. The salt.

7 Q. No, the thing that the salty stuff came out
8 of. What did that feel like?

9 A. It felt like water and gooey.

10 Q. So that's the stuff that came out, right?
11 What was the stuff that the thing that came out of?
12 What did it feel like?

13 A. Because I kept tasting a little bit.

14 Q. You could taste it?

15 A. I could taste a little bit and it was salty.

16 Q. Did it taste yucky?

17 A. Hm-hmm.

18 Q. "Yes"?

19 A. Yes.

20 Q. And you said it kind of spilled out of your
21 mouth?

22 A. Hm-hmm, a lot.

23 Q. A lot came out?

24 A. It spilled on my pants too.

25 Q. Okay. How far did the thing go in your mouth?

26 A. Like my throat.

27 Q. Could you close your lips around the thing
28 that was in your mouth?

1 A. No.

2 Q. Was it big?

3 A. Yes.

4 Q. How big it was?

5 A. It was like the whole thing, the whole thing

6 in my mouth.

7 Q. It almost took up your whole mouth?

8 A. (Nods head.)

9 Q. Sometimes when you put something in your

10 mouth, it can make you choke. Did it feel like it was

11 going to make you choke at all?

12 A. Yes.

13 Q. That's not good.

14 A. It's near right there. I couldn't breathe.

15 Q. Okay. So you were having a little bit of

16 trouble breathing?

17 A. Hm-hmm.

18 Q. Okay. And that was like each of the three

19 times that you played?

20 A. Yes.

21 Q. And I think you told me that it happened at

22 recess; is that right?

23 A. Yeah, but sometimes in the morning and like

24 near -- some of them are in the morning.

25 Q. Okay. Because you have a couple recesses

26 during the day; is that right?

27 A. Yeah, but never at lunch recess.

28 Q. So it didn't happen at lunch recess?

1 A. (Shakes head.)

2 Q. Okay. So, B., I want to ask you a couple more
3 questions, okay? Have you been a little bit nervous
4 about coming to court?

5 A. Yeah.

6 Q. You're doing a great job. Tell me what you
7 were so nervous about.

8 A. Um, I was nervous because I never went to
9 court before.

10 Q. Okay. And was your mom a little bit nervous
11 too?

12 A. Yes.

13 Q. Did your mom want to come to court?

14 A. No.

15 Q. Did she want you to come to court?

16 MR. SCHUMB: Objection, Your Honor,
17 speculation.

18 THE COURT: Sustained. The answer's stricken.
19 BY MS. FILO:

20 Q. Did your mom tell you that, um, she didn't
21 want you to come to court?

22 A. Yes.

23 Q. And I came out to your house, do you remember
24 that?

25 A. Hm-hmm.

26 Q. I gave your parents some paper. Do you
27 remember me giving them the paper?

28 A. Yes.

1 Q. And until I gave them the paper, you guys
2 didn't want to come to court; is that right?

3 A. Like when you talked to them a little bit, she
4 said she can let me go. She had to let me go.

5 Q. Okay. Um, and at first did you want to just
6 tell us that you didn't remember anything about
7 anything?

8 A. Can you repeat that?

9 Q. Yeah. When we first said that you were going
10 to come to court, did you think, did you ever think,
11 well, I'll just tell them I don't remember anything and
12 that would make it easier.

13 A. No.

14 Q. Did your mom not want you to remember
15 anything?

16 MR. SCHUMB: Objection, speculation.

17 THE WITNESS: No, she said to tell the truth.

18 THE COURT: Sustained. The answer is
19 stricken.

20 BY MS. FILO:

21 Q. B., I think that's all the questions I have
22 for right now, okay? But I'm going to take one second
23 and look at my notes and make sure I asked everything I
24 need to.

25 A. I think she said to tell the truth, but I
26 don't remember what she said.

27 Q. Tell the truth and be brave, right? Were
28 those the things you were going to do today?

1 A. Hm-hmm.

2 Q. Good job. Thank you very much, B., give me
3 one second. I'm going to look at my notes and I will
4 make sure I don't have anymore questions for you.
5 Thank you.

6 MS. FILO: I think that's all the questions I
7 have, B., thank you very much.

8 THE COURT: All right.

9 MS. FILO: I think Mr. Chris has some
10 questions.

11 THE COURT: Now it's time for Mr. Schumb,
12 that's Mr. Chris.

13 First, is there a challenge to competency
14 under Evidence Code Section 701(b)?

15 MR. SCHUMB: Not at this time. We reserve
16 that for, um, after -- hold on, let me confer with
17 counsel.

18 I think I'll cover that in my cross, Your
19 Honor.

20 THE COURT: The Evidence Code allows two
21 occasions for competency, at the beginning of direct
22 and at the end of direct. The Evidence Code allows me
23 to defer to the end of direct, but no further. Is
24 there a challenge to competency at the end of direct?

25 MR. SCHUMB: Um, can we approach, Your Honor?

26 THE COURT: Sure.

27 (Discussion off the Record.)

28 THE COURT: Thank you. Um, there's no

1 challenge to competency under Evidence Code Section 701
2 I'm told by the defense counsel. And all witnesses are
3 presumed competent under Evidence Code Section 700
4 irrespective of age.

5 Go ahead please.

6 MR. SCHUMB: Thank you.

7 CROSS EXAMINATION

8 BY MR. SCHUMB:

9 Q. All right, B., you remember who I am? I'm
10 Mr.?

11 A. Chris.

12 Q. Good memory. Now, I want to ask you some
13 questions, okay? You don't seem too nervous. You seem
14 pretty relaxed. You're smiling. Are you nervous?

15 A. Kind of.

16 Q. A little bit? Okay, I know. Um, you and I
17 haven't talked before so I know it's a little strange
18 talking to new people about this stuff. How many times
19 have you talked to Ms. Alison?

20 A. A few.

21 Q. Ms. Filo, how many times have you talked to
22 her?

23 A. A few times.

24 Q. Two or three times?

25 A. Might be a little bit more.

26 Q. Maybe more, okay. Did you practice your
27 testimony with her? Did you go through questions?

28 A. (Shakes head.)

1 Q. Did you go through any questions with her?
2 Did she ask you questions and did you answer the
3 questions when you met with her before?

4 A. I don't get it.

5 Q. Don't recall?

6 THE COURT: The witness is shaking her head
7 no.

8 BY MR. SCHUMB:

9 Q. You were saying that she'd come over to your
10 house. Was that on Friday, last Friday?

11 A. That wasn't the day. That was like in school.

12 Q. Okay. But you said she was talking to you and
13 your mom about testifying. Do you remember that?

14 A. What? In my house?

15 Q. I don't know. I'm asking you. Did she come
16 over to your house this weekend or on Friday?

17 A. (Shakes head.)

18 Q. Did you come here to her office?

19 A. No.

20 Q. How did you talk to Ms. Filo? When was the
21 last time you talked to her?

22 A. She came to school.

23 Q. Oh, she came to school, I'm sorry. I didn't
24 know that was, that was on Friday?

25 A. Yes.

26 Q. Okay. How long did you talk to her?

27 A. Um, thirty minutes.

28 Q. Thirty minutes? What did you guys talk about,

1 do you remember?

2 A. Just like don't be scared, be brave.

3 Q. Okay. Did she ask you some of the questions
4 like some of the things we talked about today?

5 A. I forgot about that.

6 Q. You forgot, okay. All right. All right, um,
7 have you talked to any of your friends about testifying
8 here today?

9 A. (Shakes head.)

10 Q. No? Do you have any other friends that are
11 also testifying in this case that are going to be
12 giving, talk like you are?

13 A. Um, no.

14 Q. No, okay. Um, do you know a Laurie, a girl
15 named Laurie who was in your class with Mr. Chandler?

16 A. Yes.

17 Q. Do you still talk to her?

18 A. No, she's not really my friend.

19 Q. Not your friend anymore?

20 A. She was not my friend, actually. She's like a
21 classmate.

22 Q. All right. All right. Um, did you ever talk
23 to her about playing the game with Mr. Chandler?

24 A. No.

25 Q. Um, did you ever play this game in front of
26 the class?

27 A. No.

28 Q. Never did that? Did you ever see kids playing

1 the game?

2 A. No.

3 Q. Do you remember how the game would start off?

4 A. I don't get what you're saying.

5 Q. Do you remember how Mr. Chandler picked two
6 students to start?

7 MS. FILO: Objection, Your Honor. She's
8 testified that she doesn't remember seeing the game
9 played in the classroom.

10 THE COURT: Is the legal objection misstates
11 the testimony?

12 MS. FILO: And assumes facts not in evidence.

13 THE COURT: Sustained.

14 BY MR. SCHUMB:

15 Q. Did you ever -- um, so I think you said that
16 whenever you played the game with Mr. Chandler, there
17 were always candy and chocolate?

18 A. Yes.

19 Q. Was there usually three things that you got to
20 try?

21 A. There's more.

22 Q. More than three things, okay. And, um, were
23 they all three different things?

24 A. I don't get what you're saying.

25 Q. Ever use the same candy twice to try to fool
26 you?

27 A. (Shakes head.)

28 Q. No? You don't think so?

1 A. No.

2 Q. Would you try to guess what it was?

3 A. Yes.

4 Q. Yeah. Do you remember him talking about a
5 little girl who was deaf, she couldn't hear, and she
6 was blind, she couldn't see?

7 A. I never heard him saying about that.

8 Q. You didn't hear about that, okay. Um, but, so
9 he would, um, put something in your mouth with a
10 blindfold on and then you would taste it in your mouth,
11 right?

12 A. Yes.

13 Q. And then you would try to guess what it was.
14 Is that how the game was played?

15 A. I think so.

16 Q. Okay. Did you ever win? Were you ever able
17 to guess what he had in your mouth?

18 A. Sometimes.

19 Q. What were the things that you were able to
20 guess right?

21 A. Candy and chocolate.

22 Q. What kind of candy?

23 A. I forgot.

24 Q. Was it, um, Mentos, minty?

25 A. Yeah.

26 Q. Like minty?

27 A. Yes.

28 Q. Yeah. How would he put that in your mouth?

1 Would he have it in his hand and put it in your mouth?
2 A. Yes.
3 Q. And so he did Mentos? And you think he did
4 chocolate too? Do you know -- you're nodding your head
5 yes? You have to say words because the court reporter
6 can only take down words.
7 A. Yes.
8 Q. Do you know what kind of chocolate it was?
9 A. I forget what it's called.
10 Q. Pardon me?
11 A. I forgot what it was called.
12 Q. What's your favorite chocolate?
13 A. I don't have any.
14 Q. You don't have a favorite?
15 A. Yeah. Milky Way.
16 Q. Oh, I like the Milky Ways too.
17 A. So you remember the Mentos and remember the
18 chocolate.
19 Q. Um, did he -- um, then there was this kind of
20 gooey thing, right?
21 A. Yes.
22 Q. That we've been talking about. And did he
23 ever put water into your mouth?
24 A. I don't think so.
25 Q. To try to put water? He didn't, didn't put a
26 water up and put a little water into your mouth, sugary
27 water or salty water?
28 A. No.

1 Q. I guess you couldn't see because you had your
2 blindfold on, right?

3 A. Yes.

4 Q. Is that what spilled out of your mouth was
5 some kind of water he gave you?

6 A. I don't know.

7 Q. Did he ever ask you to try this particular
8 kind of water to see if it was salty or sugary?

9 MS. FILO: Objection, asked and answered. She
10 said there was no water.

11 THE COURT: Sustained. Rephrase.

12 MR. SCHUMB: All right.

13 BY MR. SCHUMB:

14 Q. Um, when -- so when this gooey thing was in
15 your mouth and some of the water spilled out, have you
16 ever eaten something that was really kind of sweet or
17 sour?

18 A. Candy.

19 Q. Candy, yeah, certain candies. And you know
20 how that makes kind of water in your mouth? You know
21 how --

22 THE COURT: The witness is shaking her head
23 no.

24 BY MR. SCHUMB:

25 Q. Do you know how you feel like when you eat
26 something that's real, real good kind of makes water in
27 your mouth?

28 A. It never happened to me.

1 Q. That never happened to you? Okay, all right.
2 Um, now, when this gooey thing, when it was put in your
3 mouth, did it start out gooey or did it get gooey after
4 a little while?

5 A. I don't get what you're saying.

6 Q. You don't remember?

7 A. I don't get what you're saying.

8 THE COURT: Answer out loud.

9 MR. SCHUMB: She said, "I don't get what
10 you're saying."

11 BY MR. SCHUMB:

12 Q. So when he took this kind of gooey thing, I
13 think is what you called it, first put it into your
14 mouth, was it gooey right away or did it get gooey
15 after a while?

16 A. Gooey after a while.

17 Q. Yeah. Was that because maybe the moisture in
18 your mouth, the water in your mouth made it kind of
19 gooey do you think?

20 A. I don't think so.

21 Q. Okay. And did you try to guess what that was?

22 A. No.

23 Q. Okay. Did you -- when it was in your mouth,
24 you could feel his fingers holding it, right, the gooey
25 thing?

26 A. Yes.

27 Q. And I think you told Officer Sean here that
28 that's because his fingers kind of touched your lips,

1 right?

2 A. I don't know.

3 Q. Okay. And so, um, he was holding this gooey
4 thing. Is that how he did all the candy, he held it in
5 his hands?

6 A. I think so.

7 Q. And put it in your mouth? Okay. Um, now, um,
8 do you remember where Mr. Chandler kept his keys?

9 A. I think in his pocket.

10 Q. Didn't he have a little rope around his neck
11 with his keys on it?

12 A. No.

13 Q. You don't remember?

14 A. I didn't see him where that.

15 Q. Okay. Um, so do you recall how long you would
16 be in the room on these times when you would be playing
17 the game with Mr. Chandler? Was it a few minutes? Or
18 do you remember?

19 A. I don't remember.

20 Q. Are you sure that it happened three times?
21 Might it only have happened one time?

22 A. It happened three.

23 Q. Pardon me?

24 A. It happened three or four times.

25 Q. Okay. Um, and you liked the game because you
26 got some candy? Didn't you think it was fun?

27 A. No, I don't like candy. I didn't want to have
28 cavities.

1 Q. Oh, okay.

2 THE COURT: Um, B., we take a morning recess
3 here.

4 THE WITNESS: What's that?

5 THE COURT: It's a recess, um, where we stop
6 asking questions for a while. The court reporter has a
7 very hard job and she needs, um, a rest, so we're going
8 to do that now. Um, please go with Ms. Filo. And our
9 recess usually lasts about ten or 15 minutes. Then
10 we'll take up where we left off. Thank you very much.

11 Court is in recess.

12 (A recess is taken.)

13 THE COURT: We're back on the record.

14 B. is in her chair. I'm in my chair. We're
15 ready to start again.

16 MR. SCHUMB: Thank you, Your Honor. Your
17 Honor, we have an exhibit. It's actually Exhibit A,
18 but really big.

19 THE COURT: Yes.

20 (Defendant's Exhibit A is marked.)

21 BY MR. SCHUMB:

22 Q. All right, B., so this is the same as Exhibit
23 1, the smaller one. What do you think it's a little
24 lighter and bigger, right? It's bigger than you are.
25 Um, earlier Ms. Filo was asking you where you were with
26 Mr. Chandler, and I think I couldn't see because I
27 wasn't up here. But I think you were kind of pointing
28 to this area over here. Can I give you a sticky and

1 you can put the number "1" on it? Can you put a
2 sticky? Can you do it for me so that I'm not -- is
3 that okay, do you mind? Just pin the tail on the
4 donkey. You don't want to do it? I just want to make
5 sure it's what you're saying and not what I'm saying.
6 Sometimes, you know, when adult's suggest things, you
7 know, kids say, yeah, that's right. So you sure you
8 don't want to put it on there? It's okay.

9 A. No.

10 Q. If I bring it to you, will you put it on
11 there?

12 You didn't want to get up, all right. So
13 here's a sticky with the number 1 on it. Yeah, there
14 might have been dust there because this picture was
15 taken a little while. Thank you for being so careful.
16 That's cool. Thank you very much.

17 THE COURT: The witness has affixed the yellow
18 tag that says "1" to the, um, lower right hand corner
19 about in the middle of the field of what appears to be
20 empty carpet.

21 MR. SCHUMB: Thank you, Your Honor.

22 BY MR. SCHUMB:

23 Q. Now, in looking at this exhibit, it looks like
24 when you recall Mr. Chandler's room it was a little bit
25 different, right? And that's because there was some
26 more desks here? I think you said there was another
27 desk there somewhere.

28 Is that a "yes"?

1 A. Yeah.

2 Q. Cool. And then right behind the desk, you can
3 see Mr. Chandler's chair. That was the big swivel
4 chair, right?

5 A. Yeah.

6 Q. And there was only one of those in the room.

7 A. Yeah.

8 Q. And then over here we see the kids' chairs.

9 A. Yeah.

10 Q. I think you said when you played the game with
11 Mr. Chandler in the room, you were sitting in Vivian's
12 chair?

13 A. Yeah.

14 Q. Was Vivian another student in the class?

15 A. Yeah.

16 Q. Is that why you used her chair?

17 A. Yes.

18 Q. You're very smart, okay. Mr. Chandler pulled
19 Vivian's chair or did you pull Vivian's chair?

20 A. Mr. Chandler did.

21 Q. Okay. Was Vivian's chair right where this
22 yellow sticky is? Is that where the chair was?

23 A. No, but like here. I was right there.

24 Q. Okay. Where was the chair?

25 A. Next to me.

26 Q. Okay. Because you were sitting on it, that's
27 right, okay. I'll put it right next to it like that.

28 Okay, cool. Now, I've affixed a Post-it with a "2" on

1 it that represents the chair.

2 THE COURT: Right next to the right of the
3 sticky where it says number "1."

4 BY MR. SCHUMB:

5 Q. And, um, Mr. Chandler, he was sitting in his
6 chair when he was doing this?

7 A. I don't know.

8 Q. What was he doing?

9 A. I don't really know. I had a blindfold.

10 Q. That's right, I'm sorry. You know, I was
11 thinking about that. You said that when that liquid
12 came out, the watery liquid, that it dripped on your
13 shirt and then it got on your pants. Did you actually
14 see it fall out?

15 A. I felt it.

16 Q. Okay.

17 A. Because it's hot and cold.

18 Q. All right. And so the chairs, that the chair,
19 the one chair that you sat in, um, it was all plastic,
20 right? The back was plastic? And the bottom was
21 plastic?

22 A. I don't know.

23 Q. You don't know. It had -- this blue-type
24 chair right here?

25 A. Right there.

26 Q. Okay, cool. And then Mr. Chandler's chair was
27 wherever it was, over to the side, right?

28 A. Yes.

1 Q. All right. And, um, when you got done with
2 the game, did you take the blindfold off or did
3 Mr. Chandler?
4 A. I think I did it.
5 Q. Okay. And you were sitting in the chair. Do
6 you remember where Mr. Chandler was?
7 A. (Shakes head.)
8 Q. No? Do you remember if he was standing or
9 sitting?
10 A. No.
11 Q. Did you take the blindfold off right after you
12 got done playing with the game?
13 A. Yeah.
14 Q. Did you ever take any food or drink without
15 the blindfold on? Did he ever test whether you knew
16 what something was when you didn't have the blindfold
17 on?
18 A. I think.
19 Q. Did he ever try to test to see like if you
20 knew what a liquid was, like a drink and you didn't
21 have the blindfold on and he gave you something out of
22 a bottle?
23 A. I did it all the time.
24 Q. All right. Did you ever see like plastic
25 bottles like this on his desk?
26 A. I don't know.
27 Q. Don't recall? I'm pointing to that little
28 bottle right there. That's a water bottle.

1 A. I don't know because that was on his desk.
2 Q. That's a long time ago, I appreciate that. So
3 when you were sitting here, was, um, Vivian's desk
4 right in front of you?
5 A. Nuh-uh. It was in back.
6 Q. It was in back of you? Or to the side?
7 A. Right there. It was right there.
8 Q. Now, I'm going to have to get another sticky.
9 A. Not really there. It was almost there.
10 Q. So you think Vivian's desk was somewhere over
11 here?
12 A. No. Right there. Right there.
13 Q. Down here?
14 A. Yeah.
15 THE COURT: The witness is pointing to the
16 lower right hand area of the photograph.
17 THE WITNESS: There's more space.
18 BY MR. SCHUMB:
19 Q. So it's even farther down. Was it in the
20 photo? Maybe it's not in the picture.
21 A. It's not in the picture.
22 Q. All right. Um, did, um, I think you said that
23 the, um, gooey thing and the candy was three times you
24 think.
25 A. Hm-hmm.
26 Q. Did the liquid come out all three times?
27 A. I don't know.
28 Q. Was it just maybe one time?

1 A. I don't remember.

2 MR. SCHUMB: Okay, thank you. No further
3 questions, Your Honor.

4 THE COURT: Is there any redirect?

5 MS. FILO: Just one, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. FILO:

8 Q. B., did you ever play the game and sit in a
9 chair that has wheels? See like how this chair with
10 the court reporter has the wheels on the bottom? But
11 the chair you're sitting in doesn't, right?

12 A. Hm-hmm.

13 Q. Did you ever play the game when you were
14 sitting in a chair that had wheels?

15 A. No.

16 Q. No?

17 A. Only in the children's chair.

18 MS. FILO: That's all the questions I have.
19 Thank you very much, B.

20 THE COURT: Is there any recross?

21 MR. SCHUMB: No further questions, Judge,
22 thank you.

23 THE COURT: All right. Well, B., I listen
24 very hard and I don't have any questions.

25 Um, is this witness excused or would either
26 side like her to remain on standby?

27 MS. FILO: Your Honor, at this point I think
28 we should keep her on standby.

1 MR. CLARK: We join.

2 THE COURT: Here's what that means, B.: Thank
3 you for coming to court. You've been very helpful.
4 You're free to go. It's Monday. You can go back to
5 school.

6 THE WITNESS: Okay. I don't think I'm going.

7 THE COURT: Well, okay, it's up to your mom.
8 And, um, if we need to call you back, we'll call your
9 mom. Probably we won't need to call you back, but we
10 don't really know for sure so you're free to go now.
11 Thank you very much.

12 MS. FILO: Your Honor, the People would offer
13 into evidence a copy of the recording from B.'s
14 interview with Detective Sean Pierce from the San Jose
15 Police Department which took place on or about January
16 10th, 2012. And an accompanying transcript for the
17 court's review. I'm just realizing that I may not have
18 an extra sleeve.

19 MR. CLARK: If I could? This is being offered
20 for the truth of the matter?

21 THE COURT: I was just going to ask for a
22 stipulation or she's going to call a witness.

23 MS. FILO: I'm going to call a witness to lay
24 a foundation.

25 MR. CLARK: You're trying to get in her entire
26 statement?

27 MS. FILO: Hm-hmm.

28 MR. CLARK: As what?

1 MS. FILO: As a prior statement. It's under
2 1390.

3 Your Honor, I'll do it when the witness is
4 available. At this time the People call Kim Thu. And
5 this will require the interpreter, Your Honor.

6 THE COURT: All right.

7 COURT CLERK: Raise your right hand please.

8 KIM BICH THU:

9 COURT CLERK: Do you solemnly state under
10 penalty of perjury that the evidence you shall give in
11 this matter shall be the truth, the whole truth, and
12 nothing but the truth?

13 THE WITNESS: Yes. We talk the truth.

14 THE INTERPRETER: That's what the mother say.

15 THE COURT: Ms. Thu, please make yourself as
16 comfortable as you can am that chair. And the
17 interpreter will speak into the microphone. Ms. Thu, I
18 know that you understand some English, but please wait
19 for the question to be translated from English into
20 Vietnamese. When you give your answer, please give it
21 in Vietnamese and wait for it to be translated into
22 English. That sounds like it slows things down, but,
23 actually, it helps to move things along.

24 THE WITNESS: Yes. It means that the
25 interpreter will talk in English and then I just talk
26 to the interpreter. That is right?

27 THE COURT: That's correct.

28 COURT CLERK: Would you please state and spell

1. your full name for the record.
2. THE WITNESS: My full name?
3. THE COURT: (Nods head.)
4. THE WITNESS: Kim Bich Thu.
5. THE COURT: Can you spell it.
6. THE INTERPRETER: Does the mama need to spell
7. it or the interpreter can spell it?
8. THE COURT: Madam Interpreter, since the
9. alphabet is not the same, why don't you spell it.
10. THE INTERPRETER: Kim, K-I-M, Bich, B-I-C-H,
11. Thu, T-H-U.
12. MS. FILO: Thank you, Your Honor.
13. DIRECT EXAMINATION
14. BY MS. FILO:
15. Q. Um, good morning, Ms. Thu. You are B.'s
16. mother; is that correct?
17. A. [In English] Yes.
18. THE COURT: Ms. Thu, remember to wait and
19. speak in Vietnamese to be translated into English.
20. Thank you.
21. BY MS. FILO:
22. Q. And we're referring to her as "B." for her own
23. protection, okay?
24. A. Okay. Yes.
25. Q. Ms. Thu, can you tell me B.'s date of birth?
26. What's her birth date?
27. A. I have a question. If I tell the court the
28. correct birthday of my daughter, does it affect her in

1 any way?

2 Q. No. I just want to know how old she is.

3 A. 9 years old.

4 Q. And did she turn 9 this year, 2012?

5 A. Yes.

6 Q. Is her birthday in the month of March?

7 A. Yes.

8 Q. Ms. Thu, was B. assigned to Mr. Chandler's
9 classroom in the beginning of third grade, August of
10 2011?

11 A. Yes.

12 Q. Do you talk to B. everyday after school to see
13 how her day was?

14 A. Yes.

15 Q. Do you have a good relationship with your
16 daughter?

17 A. Yes.

18 Q. Has B. always been happy to go to school?

19 A. Yes.

20 Q. Did B. ever talk to you about something that
21 she did not like in Mr. Chandler's class?

22 A. I just asked her a question to see whether
23 she's happy in class and everything, so she didn't say
24 much except that she said that he gave her candy.

25 Q. Did B. tell you that she would have to stay in
26 the classroom with Mr. Chandler during recess?

27 MR. SCHUMB: Objection, ambiguous as to time,
28 relevance.

1 THE COURT: Um, sustained. Could you rephrase
2 please.
3 MS. FILO: Sure.
4 BY MS. FILO:
5 Q. How long was B. in Mr. Chandler's class?
6 A. I don't remember very well, but I think it's
7 about some months.
8 Q. Did B. ever mention to you that she had to
9 stay in during recess with Mr. Chandler?
10 MR. SCHUMB: Same objection, ambiguous as to
11 time.
12 THE COURT: I'll take it subject to a motion
13 to strike. Maybe we can connect this in a moment.
14 MS. FILO: It's a "yes" or "no" answer.
15 THE INTERPRETER: She can answer?
16 THE COURT: Yes.
17 THE WITNESS: I don't remember. She came home
18 and sometime asked questions. And then, when she
19 answered, I didn't pay attention to that.
20 BY MS. FILO:
21 Q. So it should be just "yes" or "no."
22 MR. SCHUMB: Objection.
23 BY MS. FILO:
24 Q. Do you remember B. telling you that she had to
25 stay in at recess with Mr. Chandler?
26 MR. SCHUMB: Objection, asked and answered.
27 THE COURT: Overruled.
28 THE WITNESS: I really not remember. I don't

1 really remember.

2 BY MS. FILO:

3 Q. Do you remember being interviewed by the San
4 Jose Police Department?

5 A. Yes, that I remember.

6 Q. Did you take B. to the Bank of America
7 building to be interviewed by a police officer?

8 A. I remembered there was, I remember there was a
9 police officer who drove, um, myself and my daughter.

10 Q. And drove you to a building here in San Jose,
11 not very far away?

12 A. Yes.

13 Q. And did you talk to that police officer, um,
14 while you were in the car?

15 A. No. I was just talking with my daughter.

16 Q. When you got to the building here in San Jose;
17 did you talk to the police officer there in the
18 building?

19 A. It's like, yes, I did talk a little bit.

20 Q. Do you remember telling Officer Chubon from
21 the San Jose Police Department that B. told you that
22 she had to stay in at recess to play the game with
23 Mr. Chandler?

24 MR. SCHUMB: I'm going to object, lacking
25 foundation. Um, I don't believe there's any quote like
26 that in any interview documents that we received. If
27 there is, I'd like to see what counsel's referring to.

28 THE COURT: What's the legal basis for the

1 objection?

2 MR. SCHUMB: Lacks foundation, leading, 352.
3 There's no probative value if there is no quote that
4 makes that statement.

5 THE COURT: Overruled on those grounds.
6 Go ahead please.

7 MS. FILO: So she can answer?

8 THE COURT: Could you ask the question again.

9 MS. FILO: Sure.

10 BY MS. FILO:

11 Q. Do you remember telling Officer Chubon that B.
12 told you that she would have to stay in at recess to
13 play the game with Mr. Chandler?

14 MR. SCHUMB: Same objections, Your Honor.

15 THE COURT: Thank you. Overruled. Go ahead.

16 THE WITNESS: Yeah, it seems like. Yes.

17 BY MS. FILO:

18 Q. You did say that to Officer Chubon?

19 A. Because when he asked I remember that because
20 my daughter, when she was on break time, he called her
21 into a recess place. I just told the officer like
22 that.

23 MR. SCHUMB: Move to strike as hearsay, Your
24 Honor, as to the mother's comment about what the
25 daughter is saying which I think, I'm not sure there's
26 a quote in there. Sounds like there is.

27 THE COURT: Your legal objection is hearsay?

28 MR. SCHUMB: Yes, Your Honor.

1 MS. FILO: It's either a prior consistent or
2 inconsistent statement.

3 THE COURT: Well, it's multiple levels of
4 hearsay. Each level needs its own exception. Her
5 statement to Officer Chubon is one level, but on the
6 other hand she's the person on the stand. B.'s
7 statement to her is another level. What's the
8 exception for that level of B.'s statement to this
9 witness?

10 MS. FILO: It's a prior inconsistent or
11 consistent statement.

12 THE COURT: Which is it, inconsistent or
13 consistent?

14 MS. FILO: Inconsistent.

15 THE COURT: Okay, just a moment.

16 MS. FILO: Could I have the answer reread,
17 Judge, to get it back in my mind?

18 THE COURT: Read back the last question and
19 answer from the witness.

20 (The requested record is read.)

21 THE COURT: It's a consistent statement. The
22 witness testified she told her mom about the game, at
23 least, she thinks she did at least, told her mom,
24 Officer Sean, and the police officers, but not her
25 friends, so it's a consistent statement. The objection
26 is sustained.

27 MS. FILO: Thank you.

28 BY MS. FILO:

1 Q. Did B. tell you, um, that she was playing a
2 game with Mr. Chandler at recess time?
3 MR. SCHUMB: Objection, hearsay.
4 THE COURT: Response?
5 MS. FILO: It's going to be a prior
6 inconsistent statement, if I can lay its foundation.
7 THE COURT: I'll take it, subject to motion to
8 strike.
9 MS. FILO: Thank you.
10 THE WITNESS: Yeah. She told me that she came
11 into a place in the classroom. I don't really
12 remember.
13 BY MS. FILO:
14 Q. What did B. tell you about the game that she
15 played with Mr. Chandler in the classroom?
16 MR. SCHUMB: Objection, hearsay, foundation.
17 THE COURT: Um, I'll allow it, subject to a
18 motion to strike.
19 THE WITNESS: There was no game. I don't
20 know.
21 BY MS. FILO:
22 Q. Did B. tell you that something was happening
23 at recess with Mr. Chandler that she didn't like?
24 MR. SCHUMB: Objection, hearsay, foundation,
25 asked and answered.
26 THE COURT: Overruled.
27 THE WITNESS: I just heard that she was
28 blindfolded and I was scared, but after some days I

1 told the headmaster of the school.

2 BY MS. FILO:

3 Q. What did B. tell you about -- what did B. tell
4 you that made you scared?

5 MR. SCHUMB: Objection, hearsay, foundation,
6 and asked and answered.

7 THE COURT: Um, I'll allow it for the
8 nonhearsay exception of explaining the witness'
9 actions.

10 THE WITNESS: I was scared because, you know,
11 she was a child and then I heard about that stuff,
12 blindfolding thing, so I was scared. And that's why
13 after some days I went and met the headmaster. I told
14 the headmaster.

15 BY MS. FILO:

16 Q. Did B. ever tell you that Mr. Chandler had her
17 lie down on the floor?

18 MR. SCHUMB: Objection, hearsay, lacks
19 foundation, asked and answered.

20 THE COURT: Just a moment.

21 MR. SCHUMB: I really think, Your Honor, 352
22 is starting to weigh in. I'm not even sure what
23 inconsistent thread we're on, if that's where we are.

24 THE COURT: Just a moment please.

25 Well, I'm looking at Evidence Code Section
26 1360 which is an exception to the hearsay rule. Um,
27 which applies to the statement by a complaining witness
28 under the age of 12 describing any act of child abuse

1 or neglect. Um, I have to, first, make a finding that
2 the time, content, and circumstances of the statement
3 provides sufficient indicia for reliability. And the
4 child has to testify, which she's already done. Maybe
5 if I could hear questions concerning the time, content,
6 and circumstances, I could make a ruling on this
7 hearsay exception.

8 MS. FILO: Thank you, Your Honor.

9 BY MS. FILO:

10 Q. Ms. Thu, when did you first hear from B. about
11 this blindfolding? When did you first hear about it?

12 A. When?

13 Q. Yes.

14 A. Several months ago.

15 Q. Where were you?

16 A. At home.

17 Q. Was B. in a safe place? There was nobody
18 there making her feel bad?

19 A. At my home?

20 Q. Yes. She was safe and happy there, yes?

21 A. Yes.

22 Q. And you've already testified that you have a
23 good relationship with B.

24 A. Yes.

25 Q. She would talk to you regularly about school
26 and things that happened at school.

27 A. Yes.

28 Q. Have you known her to be an honest child?

1 MR. SCHUMB: I'm going to object as to
2 opinion. That is the ultimate question for Your Honor
3 and the trier of fact, and I object to character
4 evidence.

5 THE COURT: Well ...

6 MS. FILO: They're making the objection.

7 THE COURT: A witness' reputation for honesty
8 or lack thereof is always relevant, so I'll allow it.

9 THE WITNESS: Yes.

10 MS. FILO: Your Honor, I would offer the
11 statement under 1360. I think that is a sufficient
12 showing of, um, time, content, and circumstance,
13 although I can't get to the content because I haven't
14 been allowed to.

15 THE COURT: Is there anything else either
16 counsel wants to put on the record?

17 MR. SCHUMB: Yes, Your Honor.

18 THE COURT: Go ahead.

19 MR. SCHUMB: First of all, the, I don't
20 believe the criteria has been met. First of all, this
21 is talking about a statement given several months ago,
22 two months ago, long after she was interviewed by the
23 police and long after the allegations came up. I don't
24 even believe that this is referring to the time of the
25 original disclosure. And if the witness is, she's
26 sadly mistaken about the timeline, which I think makes
27 the veracity of her recollection questionable, so I
28 don't believe the criterion have been met and, if they

1 have, it has to do with statements that aren't
2 relevant. I don't believe there have been any
3 statements given in the last couple of months.

4 THE COURT: Ms. Filo?

5 MS. FILO: If I may, Your Honor. I think we
6 should start at the beginning. I asked B. if she
7 remembered Mr. Chandler having her lay on the ground
8 and putting a blanket over her head. She said she
9 didn't remember that. She has given that statement,
10 both to her mother and to several officers, including
11 the principal in this case, so it is that statement
12 which I am attempting to elicit.

13 As I remember the hearsay rule, I attempt to
14 elicit it, the witness says she doesn't remember, um,
15 and I am allowed then to bring that statement forward
16 as a prior inconsistent statement from other sources to
17 whom she made the statement prior in time.

18 This witness is B.'s mother. I think we've
19 had a sufficient showing, um, at this point that B. was
20 reporting to her what was happening, and I believe that
21 the witness testified that B. was in Mr. Chandler's
22 classroom just for a few months last year. It was
23 during this period that these statements were made.

24 MR. SCHUMB: That was not established, Your
25 Honor, at all. The witness testified to statements
26 that were made in the last few months is what I recall
27 the testimony being during this attorney's voir dire.

28 THE COURT: Is there anything further from

1 either counsel?

2 MR. SCHUMB: No, Your Honor.

3 MS. FILO: No.

4 THE COURT: Ms. Thu has testified that the
5 statement made to her by her daughter was made several
6 months ago, which is consistent with the, um, other
7 evidence that this witness was the first person to whom
8 the child disclosed.

9 Um, I think there's a difference between
10 weight and admissibility. I find it is admissible.
11 Um, whatever weight I give it as the trier of fact will
12 depend on the entirety of the evidence.

13 Go ahead please.

14 MR. SCHUMB: Your Honor, just for the record,
15 the alleged disclosure happened in October of 2011, so
16 that's like seven, eight, nine months ago, not a few
17 months ago. I don't know.

18 THE COURT: I think delayed disclosure is only
19 one circumstance among many.

20 Go ahead please.

21 MS. FILO: Thank you.

22 BY MS. FILO:

23 Q. Ms. Thu, did B. tell you about the blindfold
24 game before she was moved from Mr. Chandler's class?

25 MR. SCHUMB: Your Honor, I take it there's no
26 need for other hearsay objections?

27 THE COURT: I'll regard it as a continuing
28 objection.

1 MR. SCHUMB: Thank you.

2 THE WITNESS: What does it mean?

3 BY MS. FILO:

4 Q. Did B. tell you about the blindfold before she
5 was moved from Mr. Chandler's classroom?

6 A. Yes.

7 Q. Okay. Did she tell you that Mr. Chandler had
8 her lay on the floor?

9 A. I don't remember.

10 Q. Do you remember telling Officer Chubon that B.
11 told you that Mr. Chandler had her lay on the floor?

12 MR. SCHUMB: Your Honor, I -- just if I may?

13 THE COURT: What's the legal basis for the
14 objection?

15 MR. SCHUMB: I believe it lacks foundation.
16 We haven't been provided any reports that make that
17 statement. I don't believe it's in her statement, so
18 I'm not sure what counsel's referring to, if there's
19 some other discovery?

20 MS. FILO: It's Bates stamped 36. Do you not
21 have 36?

22 MR. SCHUMB: I'm sorry, Your Honor, we weren't
23 told. We were only told the three child witnesses
24 would be done today, so we ...

25 THE COURT: Take your time.

26 MS. FILO: Can I have the question reread,
27 Your Honor?

28 THE COURT: Ms. Nebolon, would you reread the

1 last question.

2 (The requested record is read.)

3 THE COURT: Do you understand the question?

4 THE WITNESS: No.

5 THE COURT: Would you ask it a different way
6 please.

7 MS. FILO: Yes.

8 BY MS. FILO:

9 Q. Ms. Thu, did you tell Officer Chubon that B.
10 told you a towel or something covered her eyes and
11 Mr. Chandler told her to get on the floor? Do you
12 remember saying that to Officer Chubon?

13 A. I remember I did say about the blindfolding
14 thing, but the rest I forget.

15 Q. You don't remember giving that statement to
16 Mr. Chubon?

17 A. Yes, I really forget.

18 Q. Okay. When you were talking to Detective
19 Chubon, were you doing your best to tell him the truth
20 about what you remembered then?

21 A. Yes. When I came there, I still remembered.
22 And I didn't mean to cheat or anything, but right now I
23 really forget.

24 Q. Okay, fair enough.

25 A. Because right now I'm working so I don't have
26 much time to think so there are things that I forget.

27 Q. Okay. Did B. tell you that Mr. Chandler put
28 things in her mouth when she had on a blindfold?

1 MR. SCHUMB: Object as hearsay. Again, it
2 sounds like we're getting away from an inconsistent
3 thread and going to the consistent testimony thread.
4 MS. FILO: This isn't even offered for the
5 truth of the matter asserted. It's just being offered
6 to explain subsequent conduct.
7 THE COURT: Is that being offered for the
8 truth of the matter asserted?
9 MS. FILO: It's just being offered to explain
10 subsequent conduct.
11 THE COURT: Whose?
12 MS. FILO: Hers.
13 THE COURT: Okay, I'll allow it for that
14 limited purpose.
15 THE WITNESS: Um, I really forget. I just
16 remember the blindfold thing. The rest I forget.
17 BY MS. FILO:
18 Q. Okay. Do you remember telling Officer Chubon
19 that B. told you in October that Mr. Chandler put
20 something in her mouth?
21 A. On that day, I told the officer what I
22 remembered. But after that, now, I don't remember
23 anymore what I said, and it's been several months.
24 Q. Okay, no problem. After you, after you talked
25 to B. in October, did you go speak to the principal of
26 the school?
27 A. Yes.
28 Q. Why?

1 A. Just like I said before, um, I talked to the
2 principal about the blindfolding thing so that the
3 principal would move her to another class.

4 Q. Why did you want her to be moved to another
5 class?

6 MR. SCHUMB: Objection, relevance.

7 THE COURT: Overruled.

8 THE WITNESS: When my daughter came home and
9 she told me about that blindfolding thing, as a mother,
10 I was scared and I wonder why going to school and she
11 has to be blindfolded. And that's why I told the
12 principal to move her to another class.

13 BY MS. FILO:

14 Q. Did you ever meet with Mr. Chandler to talk to
15 him about this blindfolding?

16 A. No.

17 Q. Was that offered to you?

18 A. The principal offered it to me, but I told her
19 that I didn't want to.

20 Q. Why didn't you want to meet with Mr. Chandler?

21 MR. SCHUMB: Objection, relevance.

22 THE COURT: Overruled.

23 THE WITNESS: The teacher?

24 BY MS. FILO:

25 Q. Yes.

26 A. Because I didn't want to. I just wanted to
27 talk to the principal because my English is not well.
28 I don't speak English well.

1 Q. Did the principal ask you about the clothes
2 that B. was wearing?

3 MR. SCHUMB: Objection, foundation.
4 Objection, hearsay.

5 THE COURT: Response?

6 MS. FILO: It's a "yes" or "no" question.

7 THE COURT: No, the objection is hearsay. And
8 the response to that objection is?

9 MS. FILO: It's not offered for the truth of
10 the matter asserted.

11 THE COURT: What's it offered for instead?

12 MS. FILO: I'm sorry, I didn't ask -- I don't
13 think -- it's not hearsay. I asked did the principal
14 ask you about the clothes. It's a "yes" or "no"
15 question.

16 THE COURT: Okay, you can answer the question.

17 THE WITNESS: It's about the principal asking
18 about my daughter's clothes?

19 BY MS. FILO:

20 Q. Yes.

21 A. I don't really remember about those details.

22 Q. Did you bring a jacket or a sweatshirt to, um,
23 the principal?

24 A. Yes.

25 Q. What color was the jacket?

26 A. Black.

27 Q. Did you point out something on the jacket that
28 you were concerned about?

1 MR. SCHUMB: Objection, relevance, ambiguous,
2 lacks foundation.
3 THE COURT: Overruled.
4 THE WITNESS: No. I don't remember about what
5 happens with the jacket. I just remember that the
6 principal asked me about that jacket, and I brought it
7 to her.
8 BY MS. FILO:
9 Q. And do you remember seeing something on the
10 jacket that had dried to an off white color?
11 A. I also forget.
12 Q. Did you tell Officer Chubon that you saw a
13 substance dried to an off white color on the front of
14 your daughter's black jacket?
15 MR. SCHUMB: Objection, lacks foundation,
16 hearsay.
17 THE COURT: Um, overruled.
18 THE WITNESS: Like I said before, I told
19 Officer Chubon what I remembered at that time, but now
20 I don't remember and I dare not say whether I said it
21 or not.
22 BY MS. FILO:
23 Q. Okay. Okay. Did you give Officer Chubon the
24 jacket?
25 THE INTERPRETER: Excuse me because both were
26 talking at the same time. Would you like me to
27 translate what the mother just said?
28 THE COURT: Um, translate everything.

1 THE INTERPRETER: Yes.

2 THE WITNESS: No, I don't want to add, just
3 please ask the question.

4 BY MS. FILO:

5 Q. Did you give Officer Chubon the jacket that B.
6 was wearing, um, the day that she told you about this
7 blindfolding?

8 A. Seems like yes.

9 Q. Thank you.

10 A. Seems that I did.

11 MS. FILO: That's all the questions I have.
12 Thank you.

13 THE COURT: Cross exam please?

14 MR. SCHUMB: Your Honor, could I have the last
15 question and answer reread.

16 (The requested record is read.)

17 THE COURT: Go ahead please.

18 MR. SCHUMB: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. SCHUMB:

21 Q. Um, is it true that, um, you never told any
22 police officer, anybody, that Mr. Chandler asked your
23 daughter to lie down on the floor? You never said
24 anything like that?

25 A. Just like I said, there was an officer who
26 drove my daughter and me to somewhere for the
27 interview, but like I am telling the truth now that I
28 don't remember whether I said it or not.

1 Q. Okay. Um, the only time that you ever
2 described what B. was asked to do by Mr. Chandler, you
3 used the word "sit". Isn't that true, that he asked
4 her to sit down?

5 A. I don't understand.

6 Q. Sure. You know the difference between the
7 word, the phrase to sit or to lay down? It's two
8 different things, right?

9 A. Just like I said, I don't remember now, but
10 the only thing I remember is that I told the police
11 officer about the blindfolding thing. About the rest,
12 I don't remember that. Now I don't remember.

13 Q. Um, when you talked to the principal, was that
14 Ms. V.?

15 A. It's something like Lee, L-L, something. I
16 don't remember the name.

17 Q. Okay, that's fine. I think the students
18 called her Ms. V.

19 A. Seems like that because it's a long name.

20 Q. Okay. So we'll call the principal Ms. V.; is
21 that okay?

22 A. The principal doesn't work there anymore.

23 Q. Okay. But just for purposes of what we're
24 doing today in our conversation, let's just refer to
25 the principal as Ms. V.

26 A. Okay.

27 Q. And I do that because she is gone. That's why
28 I don't want to just say, "the principal." Um, did

1 Ms. V. tell you that she had talked to Mr. Chandler and
2 that everything was okay?

3 A. Yes.

4 Q. She said that she had checked it out and that
5 the lesson was that his teaching was okay?

6 MS. FILO: Objection, hearsay.

7 THE COURT: Response?

8 MR. SCHUMB: Um, well, withdraw it.

9 THE COURT: Okay. Ladies and gentlemen, this
10 would be a good time for us to take our noon break.

11 Ms. Thu, I'll tell you what I tell everyone.
12 Please don't discuss your testimony with anyone.
13 Return here at 1:30 and we'll continue with your
14 testimony.

15 Is there anything else counsel would like to
16 put on the record?

17 MR. SCHUMB: Not at this time.

18 THE COURT: Thank you very much, I'll see
19 everybody at 1:30. We'll see you after the recess.
20 Thank you.

21 THE WITNESS: Do I have to go back to where my
22 family is?

23 THE COURT: This is off the record.

24 (A recess is taken.)

25 THE COURT: Ms. Thu, if you will retake the
26 stand please. Thank you.

27 MS. FILO: Your Honor, if I might, before the
28 witness resumes her testimony, um, the interpreter

1 mentioned to me before we got started this afternoon
2 that she believes that there was some miscommunication
3 about the witness' name, that when the witness said her
4 name, she said it in English which would be Thu, but
5 she has clarified with the witness that her proper name
6 is Thu. She wanted to make that correction for the
7 record.

8 THE COURT: Thank you. I will note the
9 correction that your true name is Ms. Thu. Thank you.
10 Go ahead please.

11 MR. SCHUMB: Thank you, Your Honor.
12 BY MR. SCHUMB:

13 Q. Ms. Thu, um, when you were interviewed by the
14 police officers back four months or so ago, did they
15 talk to you in English?

16 A. It was a Vietnamese person because I don't
17 speak English well.

18 Q. I understand that. But I think in the
19 beginning weren't you talking to the police officers or
20 trying to talk to them in English?

21 A. Yes.

22 Q. And you don't understand English very well, do
23 you?

24 A. There are things that I understand a hundred
25 percent, but there are things that, when they ask me, I
26 answer in my way, but I guess they understand what I
27 say.

28 Q. Because a lot of your answers that you gave to

1 the police was just like "hm-hmm."

2 A. I forget. I don't remember that thing.

3 Q. Well, what I was trying to get at is sometimes
4 people say, "hm-hmm," and they don't really mean to say
5 "yes;" they're just trying to say I'm hearing what
6 you're saying.

7 THE COURT: Is there a question pending?

8 MR. SCHUMB: Yes.

9 BY MR. SCHUMB:

10 Q. Is it true that, when you were talking to
11 these police officers and they were asking you
12 questions in English, you would say, "hm-hmm," not just
13 to mean "yes," but also to just mean I'm hearing what
14 you're saying.

15 A. To tell you the truth, what I said before with
16 the police officer, whether I say, "hm-hmm," or not,
17 right now I don't remember.

18 Q. Okay. And I appreciate that, but I think --

19 A. But I don't remember.

20 Q. At least three times in the conversation with
21 the police officers, because it was -- let me ask you
22 this: Strike that. Did you know that you were being
23 tape recorded when you were talking to the police?

24 A. I don't know.

25 Q. So --

26 A. I don't know about that.

27 Q. Okay. But at least three times during the
28 conversation with the police, you said, "I don't speak

1 English very well." Do you remember that?

2 A. Honestly, I don't remember anything.

3 Q. Is it fair to say -- strike that. Did you
4 understand everything the police officers were asking
5 you that day?

6 MS. FILO: Objection, Your Honor. At this
7 point, counsel's badgering the witness. She has
8 repeatedly stated she does not remember what she said.
9 There's a recording. We can play it if that's the
10 issue, but there's no reason to go over and over what
11 she does or doesn't remember when she has repeatedly
12 said now that she doesn't remember that interview.

13 THE COURT: Is there a legal objection?

14 MS. FILO: Asked and answered and badgering
15 the witness.

16 THE COURT: Overruled. Please ask your next
17 question.

18 MR. SCHUMB: Could I have the question
19 repeated, Your Honor.

20 (The requested record is read.)

21 THE INTERPRETER: Could you please repeat it
22 one more time.

23 MR. SCHUMB: I'll rephrase it.

24 BY MR. SCHUMB:

25 Q. Ms. Thu, did you understand everything that
26 the police officers were asking you that day in
27 English?

28 A. They asked me about my daughter, about why she

1 stopped going to school. And I answered the question,
2 but if you ask me whether that is one represent, I
3 cannot guarantee it because I don't speak English well.

4 Q. Thank you. Um, right now are you able to
5 communicate well with the interpreter?

6 THE INTERPRETER: "You" meaning the
7 interpreter?

8 BY MR. SCHUMB:

9 Q. Yes.

10 A. Yes, but I'm really scared now.

11 Q. Okay. Um, because your native language is
12 Cantonese, right?

13 A. Cantonese and Vietnamese.

14 Q. Okay. Um, do you remember, um, two weeks ago
15 or about ten days ago that a blonde-haired lady came to
16 talk to you about the case?

17 A. Yes, there was somebody came to my house.

18 Q. And did she have a Cantonese interpreter with
19 her?

20 A. Yes.

21 Q. Were you able to understand everything that
22 was being asked of you through the Cantonese
23 interpreter that time?

24 A. Yeah. Whatever they asked in Cantonese, I
25 understand.

26 Q. Okay. Wasn't the whole conversation, though,
27 in Cantonese?

28 A. Yeah. But, yes, the whole conversation is in

1 Cantonese, but if you ask me all the details, I'm just
2 a normal person. I cannot remember all the details.

3 Q. I understand. I understand. Now, initially
4 when they got there, um, your daughter, B., wasn't
5 there, right?

6 A. Yes, she was at school.

7 Q. So then they came back later that afternoon
8 and interviewed her, right?

9 A. Yes.

10 Q. All right. And when -- and did the
11 investigator also interview you a little bit as well
12 that day?

13 A. Yes. She did ask some question that I don't

14 ...
15 Q. Now, during the interview, B. was sitting on
16 your lap, right?

17 A. Yes. I hold her. I hold B.

18 Q. I'm sorry, B. And, uh, your husband was there
19 as well?

20 A. Yes, he was in the house.

21 Q. And do you remember that the investigator
22 asked you whether Mr. Chandler -- strike that. Do you
23 remember if B. was asked whether Mr. Chandler ever
24 tried to put any food in her mouth?

25 A. Seems like they did.

26 Q. And B. said, no. She denied it at that time,
27 right?

28 A. I don't really remember whether she said yes

1 or no. I cannot remember all those lengthy things.

2 Q. Okay. Well, it didn't take very long because
3 isn't it true that B. said Mr. Chandler never tried to
4 give her any food?

5 A. I don't remember because it's two weeks ago.

6 Q. Okay. So isn't it also true that, while B.
7 was sitting there right on your lap, she denied
8 Mr. Chandler touched any part of her body?

9 A. I remember that my daughter that she forgot.

10 Q. Well, she didn't say she forgot; she said that
11 it didn't happen. Don't you remember that, Ms. Thu?

12 A. As I told you, I don't remember. There are
13 things that there are people who asked me, for example,
14 yesterday I don't remember it today because I always, I
15 have headaches. I often have headaches.

16 Q. Do you remember that you told the investigator
17 just two weeks ago, less than two weeks ago, on May
18 10th, that B. wanted to move out of Mr. Chandler's
19 class because her friends were in another class?

20 A. Yes, I said that, but, yes, because in the
21 school there are two of her friends who live in the
22 neighborhood and they are very close friends and, um,
23 so she, B., is with this teacher and B. told me, Mommy,
24 I want to be with my friends so when this thing
25 happened for this occasion, I asked also the principal
26 to move her. But, yes, at the beginning she told me
27 that she wanted to be with her friends.

28 Q. Who are those two friends?

1 A. One is Bernie Doe.

2 THE INTERPRETER: For the record, the

3 interpreter couldn't get the right name, the first

4 name. Doe is the last name.

5 BY MR. SCHUMB:

6 Q. What about the second one?

7 A. Danny.

8 Q. What's Danny's last name?

9 A. The last name? The last name is Nguyen.

10 Q. Didn't you tell the investigator that the only

11 two reasons you moved B. out of Mr. Chandler's class

12 was because you were worried about cavities because of

13 the candy that he was giving her and because B. wanted

14 to be with her friends?

15 A. Yes.

16 Q. Now, you said your daughter was being

17 truthful. Was she truthful that day when she was

18 sitting in your lap responding to my investigator?

19 A. She's a child so she doesn't lie.

20 Q. Were you being truthful that day when you were

21 talking to my investigator in your house?

22 A. Because she's an investigator, I did not tell

23 her about the blindfolding thing. She's a stranger, so

24 I don't want to talk about those things.

25 Q. So you lied to her?

26 A. [In English] No, I'm not lie. No, I didn't

27 lie.

28 MR. SCHUMB: Thank you. No further questions.

1 THE COURT: Redirect?
2 MS. FILO: Just very briefly.
3 REDIRECT EXAMINATION
4 BY MS. FILO:
5 Q. Ms. Thu, have you been very nervous about
6 coming to court?
7 A. Yes.
8 Q. In fact, you, at some point, didn't want to
9 come, right?
10 A. Yes, I didn't want to come.
11 Q. And you really didn't want B. to come to
12 court, right?
13 A. Yes.
14 Q. And you were -- were you very upset about
15 having to bring B. to court?
16 A. Yes, correct.
17 Q. Was there ever a time when you believed that
18 if you just didn't remember anything that we would all
19 go away?
20 A. Honestly, I don't remember. Honestly, I don't
21 remember things.
22 Q. Okay. Did you think that if you didn't
23 remember, we wouldn't have anything to ask you? Did
24 you ever believe that?
25 MR. SCHUMB: Objection, asked and answered.
26 THE COURT: Um, sustained.
27 BY MS. FILO:
28 Q. Did you ever talk to B. about what she

1 remembered?

2 MR. SCHUMB: Objection, beyond the scope of
3 direct, or, cross.

4 THE COURT: Overruled.

5 THE WITNESS: I don't ask her about that
6 because I don't have a lot of time, so I just ask her
7 about what's going on at school.

8 BY MS. FILO:

9 Q. Okay. Have you ever told B. that the best
10 thing for her to do is to forget?

11 MR. SCHUMB: Objection, relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I only said to her to try to go
14 to school and about bad things or worse things, I just
15 now just go to school and only try to go to school and
16 don't remember anything else.

17 MS. FILO: Okay, that's all the questions I
18 have. Thank you very much.

19 THE COURT: Recross?

20 MR. SCHUMB: No, Your Honor.

21 THE COURT: Ms. Thu I have a question. You
22 said when Mr. Chubon was asking you questions, you said
23 at the beginning, B. told me she wanted to be with her
24 two friends. I didn't understand that. At the
25 beginning of what?

26 THE WITNESS: Because my daughter, since it's
27 been like two years that she's always been with her two
28 friends who lives in the neighbor and at second grade

1 they all, the three of them were together with a
2 teacher whose name is Dow. And then on the third
3 grade, suddenly, she saw on the notice that she is in a
4 different class. She was separated with her two
5 friends and she was put in Mr. Chandler's class. And
6 so she told me, Mommy, I was not happy. I want to be
7 with my friends. And I told her that, oh, try to be in
8 this class because it's no big deal being separated.
9 And then one day my daughter told me about this story,
10 and then I told the principal about the story. That's
11 it.

12 THE COURT: What story, the one about the
13 blindfold?

14 THE WITNESS: The story about the blindfolding
15 thing.

16 THE COURT: When she told you about the
17 blindfold and told you she wanted to be with her
18 friends, was that the same conversation or different
19 conversations?

20 THE WITNESS: It was two separate
21 conversation. It's very distant. About the story, I
22 told the principal about the class. When she told me
23 about she wants to be with her friends, that was
24 already past. It was fixed. I couldn't do anything.
25 So it's only I talked to the principal about the
26 blindfold story.

27 THE COURT: Thank you.

28 Ms. Filo, do you have any questions based on

1 the questions that I just asked?

2 MS. FILO: No, Your Honor, thank you.

3 THE COURT: Mr. Schumb, do you have any

4 questions just based on the questions I just asked?

5 MR. SCHUMB: No, Your Honor.

6 THE COURT: All right, um, is this witness

7 excused or would like either side like her to remain on

8 phone standby?

9 MS. FILO: She's excused.

10 MR. SCHUMB: Your Honor, we may need her

11 depending on whether or not the principal is going to

12 testify.

13 THE COURT: Ms. Thu, thank you for coming to

14 court. If we need you to come back, we'll tell you.

15 But for now you're free to go. Please make sure

16 Ms. Filo has all the phone numbers at which you can be

17 reached, your cell phone, your home phone, your work

18 phone. Do you have any questions for me about this

19 procedure?

20 MS. FILO: No, I don't have any questions. I

21 am just nervous.

22 THE COURT: Okay, that's natural. Thank you

23 very much, ma'am, you're free to go.

24 MS. FILO: If I can have just a minute to

25 excuses this witness and get our next?

26 THE COURT: Sure.

27 MR. SCHUMB: Your Honor, uh ...

28 MS. FILO: Your Honor, can we approach

1 briefly?

2 THE COURT: Sure.

3 (Discussion off the record.)

4 THE COURT: Court is in brief recess.

5 (A recess is taken.)

6 MS. FILO: At this time, the People call
7 Ms. I.

8 THE COURT: Would you raise your right hand
9 please.

10 I.:

11 COURT CLERK: Do you promise everything you
12 say here today will be the truth ask nothing but the
13 truth?

14 THE WITNESS: Yes.

15 COURT CLERK: Thank you.

16 THE COURT: Ms. I., if you'll take a seat. We
17 have a pillow there if you would like to sit on a
18 pillow to be a little higher. I don't know if you want
19 that or not. And you have a person with you. Could
20 the support person please state your name.

21 THE WITNESS: Yeseni, Y-E-S-E-N-I.

22 THE COURT: And, Ms. Yeseni, Ms. Filo told you
23 that you're not allowed to communicate. You're there
24 as a support person. It's appreciated.

25 All right, um, Ms. I., Ms. Filo will ask you
26 questions. Um, Mr. Chris will ask you questions, and I
27 might have some questions.

28 Go ahead please.

DIRECT EXAMINATION

BY MS. FILO:

Q. Ms. I., how old are you right now?

A. 7.

Q. 7 years old. What month is your birthday?

A. Um, mine is on -- I forgot.

Q. Do you know what your birthday is?

A. Yeah.

Q. What's your birthday?

A. It's 2012, or, no. It's 2012, or, I don't know.

Q. Okay. Did you just turn 7 or are you just about to turn 8?

A. No, I just turned 7.

Q. In November?

A. (Nods head.)

Q. Okay. Do you remember the day of your birthday, November what?

A. 11.

Q. November 11. Ms. I., what grade are you in?

A. Second.

Q. When you started the second grade, do you remember what month that was?

A. No.

Q. Was it before your birthday?

A. No.

Q. No? You don't think so?

A. (Shakes head.)

1 Q. Okay. When you started second grade, did you
2 go to O.B. Whaeley school?

3 A. Yeah.

4 Q. And when you started second grade, what was
5 the name of your teacher at O.B. Whaeley?

6 A. When I was first there?

7 Q. No, when you first started second grade at
8 O.B. Whaeley?

9 A. It was Mr. Chandler.

10 MS. FILO: Counsel, is there a stipulation to
11 I.D.?

12 MR. SCHUMB: There is.

13 THE COURT: That's noted. Thank you.

14 BY MS. FILO:

15 Q. How long were you in Mr. Chandler's class?

16 A. A lot.

17 Q. A lot? Do you know how much a lot is? Yeah?
18 Were you in Mr. Chandler's class over Christmas time?

19 A. Yeah.

20 Q. And did something happen right after Christmas
21 that made you not be in Mr. Chandler's class anymore?

22 A. Yeah.

23 Q. Okay. Can you tell me why you think you're
24 not in Mr. Chandler's class anymore?

25 A. (Nods head.)

26 Q. "Yes"?

27 A. (Nods head.)

28 Q. What can you tell me about why you think

1 you're not in Mr. Chandler's class anymore.

2 A. Um, because he was doing bad things to me.

3 Q. Okay.

4 THE COURT: Would you adjust the microphone?
5 I'm having a hard time hearing.

6 BY MS. FILO:

7 Q. Remember we talked about American Idol?

8 A. Yeah.

9 Q. That's going to be -- just say hello.

10 A. Hello

11 THE COURT: That's much better, thank you.

12 BY MS. FILO:

13 Q. So you said that Mr. Chandler was doing bad
14 things. What did he do that you thought was bad?

15 A. Um, first he told me to, um, sit in his chair
16 and then he put a blindfold over and then he put
17 something in my mouth.

18 Q. Okay. That was a really easy-to-understand
19 answer, but I want to ask you about each part of that
20 answer, okay?

21 A. Hm-hmm.

22 Q. Okay. So when did this first happen that you
23 remember?

24 A. Um, when I first went to his class and then a
25 week ago passed, I think, or, a month. I don't know,
26 yeah, a month.

27 Q. So do you start school every year after the
28 summertime?

1 A. (Nods head.)
2 Q. Is that right?
3 A. (Nods head.)
4 THE COURT: You need to answer out loud.
5 THE WITNESS: Yes.
6 THE COURT: Real words.
7 THE WITNESS: Hm-hmm.
8 THE COURT: Is that a "yes"?
9 THE WITNESS: Yes.
10 THE COURT: Thank you.
11 BY MS. FILO:
12 Q. So you started school in Mr. Chandler's class
13 after the summertime; is that right?
14 A. No.
15 Q. "No"?
16 A. No. I started when -- no, I started before
17 summer.
18 Q. Before the summer, okay. You mean before the
19 summer is ended?
20 A. Yeah. I think.
21 Q. Okay. So you think you had been in
22 Mr. Chandler's class for about a month before you
23 played the game; is that right?
24 MR. SCHUMB: Objection, leading.
25 BY MS. FILO:
26 Q. Before you did this thing with the blindfold?
27 MR. SCHUMB: Objection, leading, Your Honor.
28 THE COURT: Sustained. Could you rephrase.

1 MR. SCHUMB: Your Honor, may we approach
2 please?

3 THE COURT: Yes.

4 Ms. I., sometimes we just want to talk about
5 the rules.

6 (Discussion off the record.)

7 THE COURT: All right, thank you. Please ask
8 your next question.

9 BY MS. FILO:

10 Q. Okay. Ms. I., how long had you been in
11 Mr. Chandler's class before he had you sit in the chair
12 and put the blindfold on?

13 A. I had been there for, I don't know.

14 Q. Okay. That's okay. And you said, I think you
15 said three things, that you sat in his chair.

16 A. Hm-hmm.

17 Q. Is that right?

18 A. Yes.

19 Q. And that you put on a blindfold?

20 A. Yes.

21 Q. And he put something in your mouth.

22 A. Yes.

23 Q. You said that you sat in his chair. Do you
24 know -- I'm going to show you what I think the defense
25 has marked as Defense Exhibit A. Do you see this big
26 picture right here?

27 A. Yes, I do.

28 Q. Can you tell me what's in that picture?

1 A. Um, yeah.
2 Q. What is that?
3 A. His office. I mean, his room.
4 Q. Mr. Chandler's room?
5 A. Yeah, where, um, the class is at.
6 Q. Okay.
7 A. Yeah.
8 Q. So right in the middle of this picture,
9 there's a desk with a blue chair and a plastic bottle
10 and some files. Do you see this big desk right in the
11 middle?
12 A. Yes.
13 Q. Whose desk is that?
14 A. Mr. Chandler's.
15 Q. Attached to the desk there's this blue chair
16 and it looks like it has wheels on it, just like the
17 typist's wheels. Just like that?
18 A. Yes.
19 Q. Whose chair was that?
20 A. Mr. Chandler's.
21 Q. And right behind the desk, there's this, I
22 don't know, it looks like a big cabinet maybe with some
23 posters that says, "group prizes, end of the year," do
24 you remember that big cabinet?
25 A. Yeah.
26 Q. Was that in Mr. Chandler's classroom when you
27 were a student?
28 A. Yes, it was.

1 Q. We're getting better with the yeses. Okay.
2 So you said that you sat in Mr. Chandler's chair. Is
3 that this blue chair that's in Defense Exhibit A?
4 A. Yes.
5 Q. And I'm pointing to it right now, right?
6 A. Hm-hmm.
7 Q. "Yes"?
8 A. Yes.
9 Q. Okay. So you said that you sat in the chair
10 and then there was a blindfold. Is that what you said?
11 A. Yes.
12 Q. What can you tell me about the blindfold? Do
13 you remember anything about the blindfold?
14 A. No.
15 Q. Do you remember what color it was?
16 A. Yeah.
17 Q. What color was it?
18 A. It was blue, I think, or it was black.
19 Q. Was it dark?
20 Remember you've got to say "yes" or "no"?
21 A. Yes.
22 Q. There you go. Do you know where the blindfold
23 came from?
24 A. No, I did not.
25 Q. Okay. So you didn't see it come out of a
26 drawer or anything like that.
27 A. No.
28 Q. Okay. And what kind of blindfold was it? Did

1 you have to tie it? Or did it have like elastic
2 swimming goggles or what was it?
3 A. Like swimming goggles.
4 Q. It just had elastic behind it?
5 A. Yeah.
6 Q. Okay. Where did you sit in Mr. Chandler's
7 chair? Where in the classroom was the chair when you
8 put this blindfold on?
9 A. Next to his desk on the side.
10 Q. So right on this big picture, Defense A,
11 there's a Post-it marked "1" and "2." Was it anywhere
12 around there or some place else?
13 A. Yeah, it was around somewhere there.
14 Q. Somewhere where these two big Post-its are?
15 A. Yes.
16 Q. I know it's natural just to shake your head,
17 right, because that's how we talk to each other. But
18 court is a funny place and you have to use actual
19 words. Can you do that?
20 A. Yes, I can.
21 Q. You're doing a great job. Okay. So you sat
22 in the chair and you put -- did you put the blindfold
23 on or did Mr. Chandler put the blindfold on?
24 A. I put it on.
25 Q. Was anyone else in the classroom with you?
26 A. No.
27 Q. How did you get in the classroom by yourself?
28 Where was the rest of the class?

1 A. The rest of the class was at recess.

2 Q. When he -- after he put the blindfold on you,
3 what happened next?

4 A. He put something in my mouth.

5 Q. Did you know what it was?

6 A. No.

7 Q. Did it taste like anything?

8 A. No.

9 Q. What shape was it?

10 A. It was, um, it was kind of like a curve.

11 Q. A curve?

12 A. Yeah.

13 Q. What did it feel like? Was it squishy? Was
14 it hard?

15 A. It was a little bit hard.

16 Q. A little bit hard? You said it did not taste
17 like anything, right?

18 A. No.

19 Q. How big was it?

20 A. Um, I don't know how big it was.

21 Q. Did it hurt your mouth when he put the thing
22 in your mouth?

23 A. A little.

24 Q. Why did it hurt? What hurt about it?

25 A. Um, I don't know.

26 Q. Okay. Well, sometimes you put something on
27 your tongue and it's really hot so it burns or
28 sometimes it's, um, scratchy so it scratches your mouth

1 or sometimes it's, um, you know, too big and so it
2 makes your lips hurt because you can't stretch your
3 mouth out enough. What was it that made it hurt?

4 MR. SCHUMB: Objection, leading.

5 THE COURT: Overruled.

6 THE WITNESS: It was, um --

7 THE COURT: You can answer.

8 THE WITNESS: How old was I?

9 THE COURT: No.

10 Could you ask the question again.

11 BY MS. FILO:

12 Q. What was it that made your mouth hurt? You
13 said it hurt a little. What about the thing made it
14 hurt?

15 A. It was like all the way in the back of my
16 mouth.

17 Q. All the way in the back, in the back of your
18 mouth, like back in your throat?

19 A. Yeah.

20 Q. Did you feel like you were going to choke?

21 A. Yes.

22 Q. Did Mr. Chandler say anything to you while the
23 thing was in your mouth?

24 A. Yes.

25 Q. What did he say?

26 A. He told me to move my tongue.

27 Q. Did he say anything else?

28 A. No.

1 Q. Ms. I., could you tell where Mr. Chandler was
2 while you were sitting in the chair?
3 A. He was in front of me.
4 Q. How could you tell that he was in front of
5 you?
6 A. Because when he talked I heard him in front of
7 me.
8 Q. Could you tell where his hands were at all?
9 A. Um, yeah.
10 Q. Where were his hands?
11 A. Um, they weren't on my body. Um, it was in
12 the back of my head.
13 Q. What was he doing with the hand that was --
14 let me ask you, how was it on the back of your head?
15 Was it like a fist or open hand or what was his hand
16 like when it was on the back of your head?
17 A. Open hand.
18 Q. Like all my five fingers displayed?
19 A. Yes.
20 Q. That's what was on the back of your head?
21 A. Yes.
22 Q. What was he doing with the back of your head?
23 A. He was bending it back and forth.
24 Q. Pushing your head back and forth? How long
25 did that last?
26 A. Like almost a lot.
27 Q. Almost a long time?
28 A. Yes.

1 Q. Did you like it?
2 A. No.
3 Q. How did you feel when that was happening?
4 A. Scared.
5 Q. What were you scared of, do you know?
6 A. No.
7 Q. Just felt scared?
8 A. Yeah.
9 Q. How many times did this happen with
10 Mr. Chandler?
11 A. A lot.
12 Q. Can you -- um, like more than two times?
13 A. Yes.
14 Q. More than five times?
15 A. Yes.
16 Q. More than ten times?
17 A. Yeah.
18 Q. Maybe more than that? Did the game always
19 happen at recess time?
20 A. No.
21 Q. When else did it happen?
22 A. It happened sometimes -- yeah, it was during,
23 um, class.
24 Q. You did play this blindfold game in front of
25 the class?
26 A. No. Oh, yeah.
27 Q. Okay. Um, how many times did that happen
28 where you played the game in front of the whole class?

1 A. Once.

2 Q. Ms. I., did you ever, did you ever have this
3 blindfold put on you by Mr. Chandler after you played
4 the game with the whole class?

5 A. No.

6 Q. Okay. So was the time where the whole
7 classroom was there the last time you did or was there
8 other times?

9 A. Can you repeat it?

10 Q. Yeah, that's not a very good question. Okay.
11 So you said that you -- I'm just going to call it this
12 blindfold game, okay?

13 A. Okay.

14 Q. The blindfold game, you said you maybe played
15 ten times; is that right?

16 A. No.

17 Q. No? How many times do you think it was?

18 A. One.

19 Q. The blindfold game?

20 A. Yeah with the whole class.

21 Q. With the whole class, okay. You said that you
22 played it alone with Mr. Chandler a lot of times,
23 right?

24 A. It wasn't a game.

25 Q. It wasn't a game, okay. Sorry, that was
26 probably a bad word. So the thing with the
27 blindfold --

28 A. Sometimes I did play it with, um,

1 Mr. Chandler. I had to like guess what candy was it.

2 Q. Okay. Okay. I'm going to back up a little
3 bit, okay?

4 A. Okay.

5 Q. Do you remember the very first time that you
6 came into the classroom and sat in the chair and put
7 the blindfold on?

8 A. No, I did not.

9 Q. Okay. Do you remember the very last time?

10 A. A week ago.

11 Q. A week before you stopped going to his
12 classroom?

13 MR. SCHUMB: Objection, misstates the
14 testimony, leading.

15 THE COURT: Sustained. Could you rephrase?

16 MS. FILO: Sure.

17 BY MS. FILO:

18 Q. When you say, "a week ago," you're not in
19 Mr. Chandler's class anymore, right?

20 A. No.

21 Q. So did you play the blindfold -- did you do
22 this blindfold thing only while you were in
23 Mr. Chandler's classroom?

24 A. Yes.

25 Q. Okay.

26 A. Sometimes.

27 Q. Okay. Did you ever, did you ever -- what's
28 the best way to ask this? I'm trying not to confuse

1 you because now I'm going to confuse myself, okay?

2 A. Okay.

3 Q. So you've told us that you would come in here,
4 into the classroom, and sit on the chair and put the
5 blindfold on, right?

6 A. Hm-hmm.

7 Q. "Yes"?

8 A. Yes.

9 Q. The very, very first time, was anybody in the
10 classroom, other than you and Mr. Chandler?

11 A. The first time when I played, the whole
12 classroom did it.

13 Q. The first time you did it with the whole
14 classroom?

15 A. Yes.

16 Q. And then after that, did you keep coming to
17 the room and sitting in the chair and putting on the
18 blindfold?

19 A. Yes.

20 Q. Okay, now I understand, thank you. After you
21 did the demonstration with the whole class. So not
22 that time. All the times after that, how many times
23 after that, were you there, do you remember?

24 A. No.

25 Q. You just said it was "a lot." Was that the
26 right word?

27 A. Yeah.

28 Q. Okay. When you played or when you did the

1 demonstration with the whole class there, that was the
2 very first time?

3 A. Yes.

4 Q. Do you remember what was in your mouth? You
5 said you thought candy. Is that what you said?

6 A. Yeah, candy the first time.

7 Q. Could you tell what kind of candy it was?

8 A. No.

9 Q. But you know it was candy?

10 A. Yeah.

11 Q. Okay. Were you supposed to guess what it was?

12 A. Yes.

13 Q. And so did you do that?

14 A. Yes.

15 Q. You guessed? What the candy it was?

16 A. Yes.

17 Q. And what happened if you got it right?

18 A. We, um, nothing. We just had to go back to
19 our seats.

20 Q. Okay. So now, the times that you came into
21 the room and sat in the chair and put the blindfold on,
22 what was put in your mouth? Did that taste at all like
23 the candy Mr. Chandler used when you were there with
24 the whole classroom?

25 A. No.

26 Q. You knew the difference. It was something
27 different?

28 MR. SCHUMB: Objection, leading.

1 THE COURT: Sustained. Rephrase.
2 BY MS. FILO:
3 Q. Was it something different what he put in your
4 mouth?
5 A. Yes.
6 Q. It was different, okay. Did anything -- while
7 you were playing the game -- sorry. While you were in
8 Mr. Chandler's classroom by yourself with him and he
9 put the thing in your mouth, do you know the times I'm
10 talking about?
11 A. Yes.
12 Q. Did anything ever come out of the thing or
13 come out of your mouth?
14 A. No.
15 Q. Could you tell how close Mr. Chandler was to
16 you while you were sitting in his chair and you had the
17 blindfold on?
18 A. Yes. A little bit close.
19 Q. Okay. So how could you tell how close he was
20 to you?
21 A. Because when he talked, um, like he was super
22 close.
23 Q. And he had his hand on the back of your head,
24 right?
25 A. Yes.
26 Q. Okay. Ms. I., have you talked to anybody else
27 about the thing that would happen in Mr. Chandler's
28 classroom with the blindfold?

1 A. No, I did not.
2 Q. Who was the very, very first person you told?
3 A. My mom.
4 Q. Why did you tell your mom?
5 A. Because, um, I had to tell her because I was
6 scared.
7 Q. And have you always liked going to school?
8 A. Yes.
9 Q. And after Christmas, did you not want to go to
10 Mr. Chandler's classroom anymore?
11 A. No.
12 MR. SCHUMB: Objection, leading.
13 THE COURT: Overruled. I'll let the question
14 and the answer stand.
15 BY MS. FILO:
16 Q. And did you tell your mom I don't want to go
17 to Mr. Chandler's class anymore?
18 A. Yes.
19 Q. And did you tell her what happened?
20 A. Yes.
21 Q. So, other than -- and then did you talk to
22 some police officers too?
23 A. Yes. I did.
24 Q. And did you talk to Officer Sean over there?
25 A. Yes.
26 Q. Yeah. And when you talked to Officer Sean,
27 did you do your absolute best to tell him everything
28 that was the truth?

1 A. I sure did.

2 Q. And, other than Officer Sean and your mom,
3 have you talked to, like have you talked to any of your
4 friends at school?

5 A. No.

6 Q. No? Ms. I., you and I have met a couple
7 times, right?

8 A. Yes.

9 Q. How many times have we met?

10 A. Two times.

11 Q. Did I tell you what you were supposed to say?
12 What did I tell you?

13 A. Everything I told my mom.

14 Q. Did I tell you about whether or not you should
15 tell the truth or not the truth?

16 A. The truth.

17 Q. Did I say to only tell the truth?

18 A. Yes.

19 Q. Have I ever given you questions like this?
20 Have we ever done these questions before?

21 A. Yes.

22 Q. Tell me about that.

23 A. When?

24 Q. Um, so today I've asked you a lot of
25 questions, right?

26 A. Yes.

27 Q. And all about your time in Mr. Chandler's
28 classroom, right?

1 A. Yes.
2 Q. Have I asked you questions about that before?
3 A. No.
4 Q. I asked you a lot about your family and your
5 school?
6 A. Yes.
7 Q. All the things you like to do?
8 A. Yes.
9 Q. Okay. And then one time you even came to
10 court, right?
11 A. Yes, I did.
12 Q. And we went and met another judge in another
13 courtroom?
14 A. Yes.
15 Q. Did I tell you why we were doing that?
16 A. Yeah.
17 Q. What did I tell you?
18 A. You told me that I had to come here because it
19 was very important.
20 Q. And did I tell you -- do you remember me
21 talking about whether or not this was a safe place?
22 A. Yes.
23 Q. We showed you where all the police officers
24 were and everybody to keep you safe?
25 A. Yes.
26 Q. And that I didn't want you to be scared?
27 A. Yes.
28 Q. Okay. Ms. I., has anyone told you what you're

1 supposed to say here today, other than to tell the
2 truth?

3 A. Yes.

4 Q. What else have we told you?

5 A. Um, I don't remember.

6 Q. I think that's all the questions, but I'm
7 going to look at my notes real quick and make sure I
8 didn't forget anything, okay?

9 A. Okay.

10 Q. Okay, thank you.

11 Ms. I., I think I asked you already. I asked
12 you about how big the thing was that Mr. Chandler put
13 in your mouth?

14 A. Yes.

15 Q. Do you remember how big it was?

16 A. No.

17 Q. So, um, you said it was curved.

18 A. Yes.

19 Q. So like my pen is curved?

20 A. No.

21 Q. Like what?

22 A. Um, I don't know.

23 Q. Okay. Did it seem big or small?

24 A. Big.

25 Q. Okay. You said that it was kind of so far
26 back in your throat that it made you choke a little
27 bit?

28 A. Yes.

1 MS. FILO: Okay, I think that's all I have,
2 Ms. I., thank you.

3 THE COURT: And now, um, Mr. Chris gets to ask
4 you questions. And if I have any questions, I'll ask
5 you after that.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

8 Go ahead please. Cross exam.

9 MR. SCHUMB: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. SCHUMB:

12 Q. All right. Are you having fun yet? No? A
13 lot of questions, lost of things to remember. That's
14 okay. Um, we just want to make sure that today you
15 tell the truth and you say what you recall, okay?

16 A. Okay.

17 Q. Sometimes adults have, or, anybody has a way
18 of kind of saying something to you that kind of
19 suggests something else. Want me to give you an
20 example?

21 A. Yes.

22 Q. If I come over at lunch and I see you eating a
23 super yummy bag of gummy bears and I say, hey, Ms. I.,
24 those look really good, what am I probably actually
25 doing?

26 A. Saying if, um, you want some.

27 Q. Yeah, I'm kind of asking if I can have some.
28 But I don't say that; I just say it another way and

1 then you go immediately, gee whiz, I wonder if he wants
2 some. Sometimes when we ask our questions sort of like
3 ask for that answer. And what I want you to do today
4 is just give me your answer that's the truth. And you
5 know when a fine answer is? I don't know. Okay?

6 A. Okay.

7 Q. Let me first of all ask you, um, is this kind
8 of how -- and I'm looking at Exhibit A now. Is this
9 kind of how the, um, the room was laid out in the
10 beginning of the year?

11 A. Yes.

12 Q. And you're still in that room, right?

13 A. No.

14 Q. Oh, you're not?

15 A. No.

16 Q. What room are you in now? Who's your teacher?

17 A. I'm in a different school.

18 Q. Oh, okay. All right. Um, and we see some --
19 what's that right there, pointing to the lower left
20 hand side.

21 A. A paper.

22 Q. I mean, this whole ...

23 A. A desk.

24 Q. What's that?

25 A. A chair.

26 Q. And what kind of chair is that?

27 A. It's, um, a chair like for, um, um, I don't
28 know how to explain it.

1 Q. A student?

2 A. Yeah.

3 Q. That's a student chair. There's another

4 student chair right behind it.

5 A. Yes.

6 Q. And then you could see the chair behind

7 Mr. Chandler's desk and that's the teacher's chair,

8 right?

9 A. Yes.

10 Q. Do you know what the difference was between

11 the two chairs?

12 A. No.

13 Q. Um, have you ever sat in Mr. Chandler's chair?

14 A. Yes.

15 Q. Okay. And how many times have you sat in his

16 chair?

17 A. A lot.

18 Q. Okay. Why would you sit in his chair?

19 A. I don't know.

20 Q. Okay. Um, is there only one teacher chair in

21 the room?

22 A. Yes.

23 Q. Um, all right. Um, I have my notes too.

24 You're the only one that doesn't have any notes. All

25 right, Ms. I., um, now, first of all, we've been sort

26 of talking about this game that was played, but it was

27 actually part of a lesson, wasn't it?

28 A. No.

1 Q. Do you remember the story about the girl that
2 was deaf and blind, she couldn't see and couldn't hear?

3 A. No.

4 Q. Helen Keller. Do you remember Helen Keller?
5 You guys read some books about her?

6 A. I don't remember.

7 Q. Okay. Well, was -- do you remember how the
8 game went in the class when the game got played in
9 front of everybody?

10 A. Yes.

11 Q. How did it start out?

12 A. First, um, like he picked two people, um, and
13 then he put two chairs, um, like right there next, um,
14 where, um, that table is at.

15 Q. Okay.

16 A. Then he got two chairs and put them in front
17 of there and then he kind of moved the rest. And then
18 he picked the two students and then he picked me and my
19 other friend.

20 Q. Okay. Now, um, so the, there were two
21 students playing. Did you play that more than one time
22 played in the classroom or more than one time?

23 A. No.

24 Q. And so one of the people that got picked was
25 you. And who was the other person, do you remember?

26 A. Yes.

27 Q. Who was it?

28 A. My friend, Elvia Joe.

1 Q. Do you mean Via?
2 A. No. Elvia.
3 Q. Elvia? Not quite sure how to spell her name.
4 Do you know how to spell her name?
5 A. No.
6 Q. So, anyway, is it you and Edgio?
7 A. No. Elvia.
8 Q. Elvia Joe. Thank you. You were sitting in
9 the chairs. And then, um, how did the game start?
10 A. First we had to sit in the chair and then we
11 had to put like something around our eyes so, um, and
12 then we had to guess like what was it.
13 Q. Okay. Was Mr. Chandler holding the thing in
14 his hand and putting it in your mouth?
15 A. Yes.
16 Q. Was he telling you to lick it and to taste it?
17 A. No. He told us to chew it.
18 Q. Chew it, okay. What were some of the things
19 he put in your mouth?
20 A. Candy.
21 Q. Okay. Do you remember what kinds?
22 A. No.
23 Q. Did you guess right when he asked what it was?
24 A. Yes.
25 Q. You did. So you knew these candies from
26 before. Was it just candy or was it chocolate or
27 anything else?
28 A. Sometimes it was chocolate.

1 Q. Okay. How many times do you think you did
2 that?
3 A. With the whole class?
4 Q. Yeah, with the whole class.
5 A. Just once.
6 Q. But he would do the same thing when he was
7 alone with you, too, where he would use different
8 candies and chocolate or whatever.
9 A. Yeah, he would use different candy.
10 Q. Okay. So did it start with the taste test?
11 Do you remember that? The phrase, the taste test. Did
12 it start with a feeling test?
13 A. Yes.
14 Q. Okay. Tell us about that. How did the game
15 start with the feeling test?
16 A. First, um, we had to sit in the chair like,
17 um, with the candy. And then we had to put something
18 around our eyes and then, um, first it was, um, he
19 would do it on our hands. And then the next one, um,
20 we had to lay down on the floor and then take off our
21 shoes and then do it with, um, then he would do it with
22 our feet.
23 Q. This is in front of the whole class?
24 A. Yes.
25 Q. What did you put over your head for that?
26 Because you're moving around now, right? One time
27 you're sitting on the floor. Did you use something
28 else to cover your head while on the floor?

1 A. No, I don't think I did it. No, I didn't do
2 it on the floor, just with the candy.
3 Q. You saw other kids doing it on the floor?
4 A. Yes.
5 Q. What did they put over their head, like a bag?
6 A. Yes.
7 Q. I think you said it was like the bag they use
8 to do the three-legged races in?
9 A. Yes.
10 Q. Tell me about those bags. Where were they
11 kept?
12 A. In the bucket.
13 Q. Okay. He would get that and cover the kids
14 with that and then he would cover their heads so they
15 couldn't see and then they would try to guess what he
16 was touching them with?
17 A. Yes.
18 Q. And how many times did you see that done?
19 A. With the whole class?
20 Q. Yeah.
21 A. Once.
22 Q. Once?
23 A. Yes.
24 Q. Um, now, so how did the game work? If you won
25 the feeling test, then what happened?
26 A. We had to go back to our seats.
27 Q. Okay. It was kind of like a good thing to
28 lose, right, because you got to keep going?

1 A. Yes.

2 Q. Then if you got to the taste test, what did
3 you get with the taste test?

4 A. Candy.

5 Q. All right, there you go. Did you sometimes
6 not guess right, just to get to the candy?

7 A. Sometimes.

8 Q. How about anybody else? Do you think other
9 people did that too? Did you ever talk to your friends
10 about that?

11 A. No.

12 Q. Okay, all right. Um, now, um, um, so, uh,
13 Mr. Chandler would -- um, did you ever see Mr. Chandler
14 actually giving the food to other kids?

15 A. No.

16 Q. Okay. Um, now, I think you said that, um,
17 you -- at some point, did you get talked to by
18 Ms. Peery and Mr. Lara?

19 A. No.

20 Q. And another person?

21 A. No.

22 Q. They didn't sit down with you sometime in
23 January, three or four months ago and ask you what was
24 going on in Mr. Chandler's room?

25 A. Oh, yeah.

26 Q. Do you remember that?

27 A. Yes.

28 Q. Okay. Who was there?

1 A. Um, it was, um, the principals, um, other
2 assistant that works for her sometimes. She was
3 there. And then another assistant.
4 Q. Mr. Lara?
5 A. Yeah.
6 Q. And then I think another lady came a little
7 bit later. Was there a third lady that came? I think
8 you told the story twice that day, do you think?
9 A. I don't know.
10 Q. A lady came a little bit late. I know it was
11 a long time ago, so if you don't, that's okay.
12 A. Okay.
13 Q. And, um, they kind of asked you what was going
14 on in Mr. Chandler's room?
15 A. Yes.
16 Q. Do you remember what you told them?
17 A. Yes.
18 Q. Okay. What did you tell them?
19 A. I told them everything that I told, um, you
20 guys right now.
21 Q. Okay. Did you tell them that it only happened
22 one time?
23 A. The whole class?
24 Q. No, just period. It only happened one time.
25 A. Oh, no, a lot.
26 Q. Now, before that, you talked to your mom,
27 right?
28 A. Yes.

1 Q. And, um, did you tell your mom what had
2 happened in Mr. Chandler's class?

3 A. Yes.

4 Q. And, um, did you tell your mom about him
5 putting something in your mouth?

6 A. Yes, I did.

7 Q. Did you tell her that it made you choke?

8 A. Yes.

9 Q. Are you sure? You sure you didn't tell her
10 that it didn't make you choke?

11 A. I did tell her.

12 Q. That it made you choke.

13 A. Yes.

14 Q. All right. Um, now, when you were playing the
15 game in the room, and I think you said that that was
16 alone with Mr. Chandler, right?

17 A. Yes.

18 Q. Um, did you ever, um, were you always sitting
19 in the same place?

20 A. Yes.

21 Q. Okay.

22 A. I was.

23 Q. And where was that?

24 A. In his chair.

25 Q. In his chair. Where was he?

26 A. In front of me.

27 Q. In front of you, okay. Was there a desk here
28 at that time?

1 A. No.

2 Q. Sure?

3 A. Sure.

4 Q. There wasn't a student desk right here?

5 A. Nope.

6 Q. Was he standing or sitting?

7 A. Standing.

8 Q. How do you know that? You had a blindfold,

9 right?

10 A. Yeah.

11 Q. How do you know?

12 A. Because when he talked, like I heard it from

13 like, from up there, so I knew that he was like, um,

14 next to me.

15 Q. Okay. And, um, so then he would give you some

16 food, right?

17 A. Yes.

18 Q. Okay. And was it always like three things or

19 was it sometimes four things or was it always the same

20 number, candy or food?

21 A. No.

22 Q. Did you understand that question?

23 A. No.

24 Q. Okay. You tell me next time, okay? Say,

25 Mr. Chris, I'm not sure, okay? Because you can do

26 that.

27 A. Okay.

28 Q. All right. So what I'm asking is, you think

1 you played the game with him three or four times in his
2 room alone with him, right?

3 A. Yes.

4 Q. And on those occasions, um, did he always use
5 the same number of treats or food.

6 A. No.

7 Q. Sometimes more? Sometimes less?

8 A. Yes.

9 Q. Did he usually, he usually used like three,
10 right?

11 A. Yes.

12 Q. It's not worth it unless you get at least
13 three pieces of candy, right?

14 A. Yeah.

15 Q. So like at least three and sometimes a few
16 more maybe?

17 A. Yes.

18 Q. Okay, cool. And, um, so, uh, he'd be holding
19 the candy in his hand and put it in your mouth.

20 A. Yes.

21 Q. Did you ever feel maybe his fingers touch your
22 lips as he was putting the candy in and out?

23 A. No.

24 Q. But you know he was holding it because you
25 weren't holding it, right?

26 A. Yes.

27 Q. Where were your hands?

28 A. On the chair.

1 Q. You know he had at least one hand to hold the
2 candy, right?

3 A. Yes.

4 Q. It wasn't always candy, was it?

5 A. Yes.

6 Q. Pardon me?

7 A. It was candy all the time.

8 Q. What about, did you ever have like cheese and
9 crackers?

10 A. Yeah.

11 Q. Yeah, okay, I knew. I knew. I think you
12 didn't like the cheese and crackers, right?

13 A. No.

14 Q. Okay, I remember. So you kind of spit that
15 out, I think, a little bit, right?

16 A. Yes.

17 Q. Okay, I remember that. So if you didn't like
18 the food that he was putting in your mouth, you'd say I
19 don't want it and spit it out, right?

20 A. Yes.

21 Q. Now, when, um, he did this, uh, I think you
22 said one time, and I think it was that time with the
23 cheese and crackers, too. Well, I don't know. Do you
24 remember when you spit that out or is that kind of a
25 vague memory?

26 A. That was when it was over.

27 Q. Okay. And, uh, did he usually -- we've been
28 talking about this thing. I don't even know what you

1 want to call it. We can just call it the, oh, gosh,
2 we'll call it the -- was it always the last thing that
3 he gave you? Or he did he give you something, um,
4 before that?

5 MS. FILO: Objection, Your Honor, vague.

6 MR. SCHUMB: Let me rephrase.

7 BY MR. SCHUMB:

8 Q. And so the larger food, right, that we've been
9 talking about that he put in your mouth, um, did he do
10 that every time that you did it alone with him in the
11 room.

12 MS. FILO: Objection, Your Honor, misstates
13 the testimony.

14 THE WITNESS: No. Only sometimes.

15 THE COURT: I'm confused. I need to catch
16 up. Please bear with me.

17 (The requested record is read.)

18 THE COURT: Ms. I., did you understand that
19 question?

20 THE WITNESS: Yeah.

21 THE COURT: Okay. You can answer it.

22 THE WITNESS: Um, sometimes he would put on
23 like food.

24 THE COURT: Thank you.

25 MR. SCHUMB: Got it, okay.

26 BY MR. SCHUMB:

27 Q. He didn't always use that food that we had
28 been talking about.

1 MS. FILO: Objection, Your Honor. There's no
2 testimony it's food.

3 THE COURT: Sustained. Rephrase please.
4 BY MR. SCHUMB:

5 Q. Um, well, the thing that you described to
6 Ms. Filo, that was kind of round and bigger?

7 A. Yes.

8 Q. Or I think you said it was kind of curved.
9 Um, did he always, did you always get that food every
10 time you did it alone with him or that object?

11 A. Yes.

12 MS. FILO: Misstates the testimony. There's
13 no identification this object was food.

14 THE COURT: All right. Um, Ms. I., you talked
15 about a curved thing. Was the curved thing food?

16 THE WITNESS: No.

17 THE COURT: Was the candy food?

18 THE WITNESS: No.

19 THE COURT: What was the food?

20 THE WITNESS: The food was, um, crackers and
21 some -- no, just crackers.

22 THE COURT: Okay. Um, I'll ask counsel not to
23 use the word "food" since the witness is using the
24 words, "curved thing," "candy" and "crackers," let's
25 use those words in order to not confuse the child.

26 And I'm referring to Evidence Code Section
27 765(b) which requires me to direct questions to be in a
28 form that's reasonably likely to be understood by the

1 person's age or cognitive level of the witness, so
2 let's use the child's words, shall we, so the child
3 knows what we're saying.

4 Go ahead please.

5 MR. SCHUMB: All right.

6 BY MR. SCHUMB:

7 Q. We've been talking about the curved thing.
8 Did you get the curved -- did he put the curved thing
9 in your mouth every time you did it, played the game
10 alone in the room?

11 A. No.

12 Q. Okay. And was it like half the time or just
13 one time or do you remember?

14 A. Half.

15 Q. Half the time, okay. All right. And on the
16 other times, he would just do candy or the crackers and
17 then you would go out to recess, right?

18 A. Yes.

19 Q. Okay. And so then the curved thing, did it
20 just happen once? Did that happen like the last time?

21 MS. FILO: Objection, Your Honor, asked and
22 answered.

23 THE COURT: Overruled.

24 THE WITNESS: Um, no, it didn't just happen
25 once.

26 BY MR. SCHUMB:

27 Q. Okay. All right. So, but was that the
28 last -- on the times when the curved thing was put in

1 your mouth, was that the last thing he gave you to put
2 in your mouth?

3 A. Yes.

4 Q. Or was it the first thing? Or do you
5 remember?

6 A. The first thing.

7 Q. The first thing he put in your mouth was the
8 curved thing and then he did chocolate or food or
9 something?

10 A. Yes.

11 Q. You sure about that?

12 A. Yes. Sometimes he would put like chocolate
13 and like candy.

14 Q. Right, right, right. I'm talking about the
15 curved thing. I just want to know, was that, it wasn't
16 the last thing that he usually put in your mouth on the
17 times when he did it?

18 A. No. The first thing.

19 Q. First thing. And so you were sitting in his
20 chair right behind his desk when you would do it in the
21 room alone with him?

22 A. No.

23 Q. Where was his chair?

24 A. His chair was right there.

25 Q. Okay. I can't figure out what "right there"
26 is. Is it around where these two yellow Post-its are?

27 A. Yes.

28 Q. Okay. His chair was moved out there. Where

1 was he?

2 A. In front.

3 Q. Okay. In front this side of the desk? Back
4 of the desk? Or did it change from time to time?

5 A. It changed.

6 Q. Okay. So one time he might be standing over
7 by his desk, maybe another time standing to the side of
8 his desk. It wasn't always the same.

9 A. He was just standing in front of me.

10 Q. Okay. But now I'm trying, since -- which way
11 was the chair facing?

12 A. Um, towards him.

13 Q. Okay, that's a good answer. Was it facing,
14 like see this door here? What's this door? Pointing
15 to the upper middle portion of Exhibit A? Where does
16 that door go to?

17 A. Um, that one?

18 Q. Yeah.

19 A. I don't know.

20 Q. Does it go to the room next door?

21 A. Yeah where my brother's class was at.

22 Q. Your brother's right now?

23 A. No.

24 Q. Last year?

25 A. Yeah.

26 Q. Good memory. All right. So was Mr. Chandler
27 sometimes standing next to the closet in the desk?

28 MS. FILO: Objection, Your Honor, asked and

1 answered.

2 THE COURT: Sustained.

3 BY MR. SCHUMB:

4 Q. Was -- did, um, did you ever see him take

5 things out before you started the game?

6 A. No.

7 Q. Okay. I guess that would have been cheating,

8 right? You would have known what they were.

9 A. Yes.

10 Q. Did -- um, was it always the same kind of

11 chocolate or different chocolate sometimes?

12 A. Different.

13 Q. Hard candy sometimes?

14 A. Yes.

15 Q. What kind of hard candy, do you remember?

16 A. No.

17 Q. Was it Jolly Ranchers?

18 A. I don't know.

19 Q. Mentos? Was it Mentos?

20 A. I don't remember.

21 Q. Okay. I know, that's a long time ago. But,

22 um, did you sometimes guess the candies right?

23 A. Yes.

24 Q. You did know what they were.

25 A. Hm-hmm.

26 Q. Okay. Let me take a look at my notes, okay?

27 A. Okay.

28 MR. SCHUMB: Your Honor, would you like to

1 take an afternoon break? We're a little early.

2 THE COURT: Let's keep going if we can. The

3 court reporter is very accomplished.

4 MR. SCHUMB: I think I was starting to talk a

5 little fast.

6 BY MR. SCHUMB:

7 Q. Did he ever -- do you ever remember putting

8 strawberry flavored candy in your mouth?

9 A. Yes.

10 Q. Sweet Tarts?

11 A. Yes.

12 Q. I knew I could refresh your recollection. Um,

13 now, um, did you ever discuss what was going on at

14 recess with any of your friends?

15 A. No.

16 Q. Were any of your friends playing the game at

17 recess too?

18 A. I didn't understand that.

19 Q. Sure. Were any of your friends playing the

20 game during recess along with Mr. Chandler?

21 A. No.

22 Q. You're the only one?

23 A. Yes.

24 Q. Okay. Do you know Becky?

25 A. Yes.

26 Q. Did you ever discuss it with her?

27 A. No.

28 Q. Um, did you ever hear any noises while he was

1 playing the game alone with you in the classroom?
2 A. Yes.
3 Q. What?
4 A. Keys.
5 Q. Tell me about that.
6 A. When he put it on his desk, like I heard it.
7 Q. When he put his keys on the desk, you heard
8 it?
9 A. Yes.
10 Q. You heard kind of like a -- let me get my
11 keys. Just got my keys. I'm putting them on the ...
12 heard something like that?
13 A. Yes.
14 Q. Um, do you know where Mr. Chandler kept his
15 keys?
16 A. No.
17 Q. Do you remember if he had them around his
18 neck?
19 A. No.
20 Q. Do you remember he had like a cord and all his
21 keys on a big lanyard around his neck?
22 A. No.
23 Q. Okay. Um, um, do you know of any reason why
24 your mom might have told Ms. Peery that, um, it was,
25 you never were choked by Mr. Chandler?
26 MS. FILO: I'm sorry, Your Honor, I didn't
27 hear that question.
28 THE COURT: Just a minute.

1 (The requested record is read.)
2 MS. FILO: Objection, calls for speculation,
3 hearsay.
4 THE COURT: Sustained.
5 THE WITNESS: No.
6 THE COURT: The answer's stricken.
7 You're not doing anything wrong; it's just me
8 deciding what the rules are.
9 MR. SCHUMB: You're doing great.
10 Your Honor, if I may, I'm going to just read
11 something from, um, a transcript. And I have the
12 certified original. The transcript of the C.I.C. tape
13 recording of this witness' interview. Let me go to
14 page 28.
15 MS. FILO: I'm sorry, Your Honor, on what
16 grounds?
17 THE COURT: We'll have to have a discussion on
18 the legal issues. Um, um, Ms. I., we're going to --
19 the attorneys and I are going to talk about the legal
20 things that I have to decide. Um, and then we'll take
21 a short recess and then we'll start again with
22 questions. And that means that you can go back to the
23 room where you were waiting.
24 THE WITNESS: Okay.
25 THE COURT: All right, thank you very much.
26 We'll remain on the record outside the presence of the
27 witnesses.
28 All right. So there's, um, an issue by the

1 defense. Um, may I have an offer of proof please?

2 MR. SCHUMB: Yes, Your Honor. Page 28 on line
3 19 to 25, Detective Pierce asked this witness, when
4 this is going on, when he put this thing in your mouth,
5 what do you hear, anything like move your mouth around,
6 did you ever hear a clicking sound or movement or
7 anything? She shakes her head from side to side.

8 THE COURT: Your offer is a prior inconsistent
9 statement?

10 MR. SCHUMB: Yes.

11 THE COURT: Okay. If it's a prior
12 inconsistent statement, either the witness is not
13 excused or the witness is confronted with it while on
14 the stand. How do you propose to confront her with it
15 while she's on the stand?

16 MS. FILO: Um, I'm sorry, I guess I would ask
17 for an offer of proof of what that statement is
18 inconsistent with. I haven't heard any testimony with
19 which that proffered statement would be inconsistent.

20 THE COURT: Actually, um, she said --

21 MR. SCHUMB: She did say, "the keys."

22 THE COURT: Let me ask. Did you hear any
23 noises during this game? She said, "keys." I was
24 struck by that because that was also the testimony of
25 Ms. B. She definitely said she heard keys.

26 MS. FILO: I guess my request of counsel would
27 be to clear up when she heard the keys, if it was, at
28 what point in this exercise.

1 THE COURT: Well, the question was on cross,
2 Did you hear any noise while this was going on? Yes, I
3 heard keys. The question Detective Pierce says is,
4 When this is going on, when he put this thing in your
5 mouth, did you ever hear anything like besides him
6 saying, move your mouth around, did you ever hear a
7 clicking sound or any other movement or anything? And
8 she shakes her head from side to side. That's a prior
9 inconsistent statement. The question is, how is the
10 foundation going to be laid.

11 MR. SCHUMB: I've got to do it.

12 THE COURT: I think it has to be read to the
13 witness since she obviously won't be able to read this
14 kind of language by herself at a level of her cognitive
15 development. Is there anything else we need to put on
16 the record?

17 MR. SCHUMB: No, Your Honor.

18 THE COURT: All right, thank you. Court is in
19 recess.

20 (A recess is taken.)

21 THE COURT: All right, we're back on the
22 record. Ms. I. is sitting in her chair. And I'm
23 sitting in mine. We're both ready.

24 Go ahead, Mr. Chris.

25 MR. SCHUMB: Thank you.

26 BY MR. SCHUMB:

27 Q. Ms. I., um, when, when Mr. Chandler had the
28 other candy or food or chocolate in your mouth, would

1 he say taste it or move your tongue around on it?
2 A. No.
3 Q. He only did that with the curved object?
4 A. Yes. I think.
5 Q. He wanted you to taste that stuff to guess
6 what it is, right? Do you think you're sure with that
7 or not so sure?
8 A. Not so sure.
9 Q. That's cool. Thanks for being honest with me.
10 Um, when, um, when it was; he was done playing the game
11 in the room with just you and him, um, I think you
12 told, um, Officer Pierce that he would just say, okay,
13 it's over. And then you would take the blindfold off
14 and just go off to recess. Is that how the game would
15 end?
16 A. No.
17 Q. How did it end?
18 A. Um, first like I had to stay there like a
19 little long and then I had to go out to recess.
20 Q. Okay. Um, and so you don't recall telling
21 Officer Pierce that, when he took the object out, the
22 next thing that happened was he took your blindfold
23 off?
24 A. No. I took it off.
25 Q. Right. But did you tell him that that
26 happened, that that was the very next thing that
27 happened was you took the blindfold off and the game
28 ended?

1 A. Yes.

2 Q. What, um, so he always started with a curved
3 object, right?

4 A. Yes.

5 Q. And then, um, he would do candy or chocolate
6 or some kind of food?

7 A. Yes.

8 Q. And so he'd do the curved object, take that
9 out, then he would put candy or chocolate in your mouth
10 and you would taste that and guess what that was,
11 right?

12 A. Yes.

13 Q. And then he would do at least three, I think
14 we said, maybe five. And then the last one he would,
15 he would take it out and then you wouldn't just take
16 your blindfold off and go out to recess?

17 A. Yes.

18 Q. Okay. And where was Mr. Chandler standing
19 when you took your blindfold off after the game was
20 over when it was just him and you in the room?

21 A. Behind his desk.

22 Q. You say, "behind his desk." Do you mean over
23 here? And I'm pointing to Exhibit B.

24 A. No.

25 Q. Okay. Over here on this side of the desk?

26 A. Yes.

27 THE COURT: Pointing to the left hand side of
28 the exhibit.

1 BY MR. SCHUMB:

2 Q. Let me just put a ... now I'm going to put,
3 um, "Ms. I.," okay?

4 A. Okay.

5 Q. I'm going to put a number "1" because we might
6 use more than one. If I bring this picture over, can
7 you put the sticky on where he was standing when you
8 finished that game?

9 A. Yes.

10 Q. Let me hand you that puppy. Okay. All right.
11 Um, so, um, the -- and you would still be on the other
12 side of the desk, over on the other side, right?

13 A. Yes.

14 Q. Okay. Um, and then he would say you can go
15 out to recess. Is that what he would say?

16 A. Yes.

17 Q. And, um, now, he always started off, on the
18 times when he used the curved object, he started with
19 that, right?

20 A. Yes.

21 Q. And I think you said that right at the very
22 beginning, um, I guess just before that would happen,
23 you heard his keys go on to the desk?

24 A. Yes.

25 Q. Did that happen every time or just one time?

26 A. Every time.

27 Q. Every time. Right before he put the curved
28 object in your mouth, you heard his keys drop on the

1 desk?

2 A. Yes.

3 Q. Was it just like a matter of a couple seconds
4 or how much time between when you heard the keys hit
5 the desk and he would start doing the thing with the
6 object?

7 A. Couple of seconds.

8 Q. Couple seconds, okay. Um, do you remember
9 telling Detective Pierce, when he asked you a question,
10 and I'm reading from the transcript, page 13, line 18,
11 or, 17. Did you ever recall when Detective Pierce
12 asked you, "He takes it out. And before he puts it in
13 your mouth, did you hear anything." And you shook your
14 head from side to side no. Do you remember that?

15 A. I didn't understand.

16 Q. Okay. Um, do you remember when Detective
17 Pierce asked you, on page 13, line 21, "Can you hear
18 him do anything?" And you answered, "no"? Remember
19 telling Detective Pierce that?

20 A. Yes.

21 Q. Why didn't you tell Detective Pierce about the
22 keys hitting the desk when he interviewed you?

23 A. It's because I forgot, that's why.

24 Q. Okay. Did somebody remind you about that?

25 A. No.

26 Q. You sure?

27 A. Sure.

28 Q. Did you discuss that maybe with somebody

1 before your testimony today?

2 MS. FILO: Objection, asked and answered.

3 THE COURT: Just a moment.

4 Overruled.

5 BY MR. SCHUMB:

6 Q. So, Ms. I., let me ask you something. I don't
7 think you told Detective Pierce about that when he was
8 interviewing you right at the time this all happened
9 which was four months or so. Was your memory better
10 then than it is now about these events?

11 A. I think.

12 Q. So when you were talking to some people since
13 you talked to Detective Pierce, did somebody suggest
14 that maybe he took his keys out and put them on his
15 desk and maybe that's why you didn't hear them? Did
16 somebody suggest that to you?

17 A. No.

18 Q. Sure?

19 A. No.

20 MS. FILO: Objection, asked and answered.

21 THE COURT: Overruled.

22 BY MR. SCHUMB:

23 Q. Did this game, or, the one-on-one game with
24 Mr. Chandler always happen at recess?

25 A. Sometimes.

26 Q. Okay. When else did it happen, other than
27 when you did it during the whole class? Just talking
28 about you and him.

1 A. It was just that recess, first recess.
2 Q. Do you ever recall telling Detective Pierce
3 that it happened after school?
4 A. Can you repeat it?
5 Q. Do you ever recall telling Detective Pierce
6 that it also happened after school?
7 A. Yes, I did.
8 Q. So did it happen after school too?
9 A. Yes.
10 Q. Don't you go home after school?
11 A. Yes, I do.
12 Q. Okay. So how could it happen after school?
13 A. Because I'm, like I was late and then like,
14 um, Mr. Chandler said that I had to like, um, he was
15 going to tell me the words for it, like the next day to
16 practice, and then he came in the cards. First, um, he
17 did the thing with, uh, and then he told me to sit in
18 the chair. And then, um, I putted a blindfold on and
19 then he put the thing in my mouth.
20 Q. Okay. Did he use the curve thing that day or
21 was it just food and candy and chocolate?
22 A. Candy.
23 Q. When was that? Was that before Christmas? Or
24 after Christmas? Or do you remember?
25 A. Before.
26 Q. Okay. Now, um, before Christmas, was there a
27 talent show at school?
28 A. Yes.

1 Q. Were you in it?
2 A. Yes.
3 Q. What did you do in the talent show?
4 A. I was acting.
5 Q. Wow. Did you like do a skit with some
6 friends?
7 MS. FILO: Objection, Your Honor, relevance.
8 THE COURT: Offer of proof please?
9 MR. SCHUMB: Just timing, Your Honor,
10 establish timing.
11 THE COURT: Sustained.
12 BY MR. SCHUMB:
13 Q. Um, did you -- did your mom go with you?
14 A. Yes.
15 Q. Did you guys talk to Mr. Chandler that night?
16 Was he there?
17 A. Yes.
18 Q. Okay. Had the -- um, had he done this game
19 with you, just you and him in the room, before that
20 talent show?
21 A. Yes.
22 Q. Okay. Did you say anything to him or your mom
23 about it at that time?
24 A. No.
25 Q. Why not?
26 A. I don't know.
27 Q. Was it because it really wasn't a bad thing?
28 I mean, there was nothing wrong with it, right? There

1 wasn't anything wrong with it, was there?

2 MS. FILO: Objection, Your Honor, calls for a
3 legal conclusion.

4 MR. SCHUMB: Well, I'm responding to direct
5 exam.

6 THE COURT: Overruled.

7 Did you understand the question, Ms. I.?

8 THE WITNESS: Yes.

9 THE COURT: All right, then you can answer
10 it.

11 THE WITNESS: Can you repeat it?

12 BY MR. SCHUMB:

13 Q. Yeah. Isn't it true that you saw Mr. Chandler
14 with your mom at that talent show and, um, he had
15 already, um, done this practice thing at least once and
16 you didn't have a problem with it; it didn't make you
17 feel bad, right?

18 A. No.

19 Q. Yeah. Isn't it true, you said something today
20 when you first started off, saying he did something bad
21 to you. But somebody told you that, right? Somebody
22 told you it was bad.

23 A. Yes.

24 Q. Who told you it was bad?

25 A. My mom.

26 Q. Okay. Um, but you understand it may not have
27 been bad. It may have not been anything wrong with
28 what he did. Is that possible?

1 MS. FILO: Objection, calls for speculation.
2 THE COURT: Sustained.
3 BY MR. SCHUMB:
4 Q. Okay. Um, but at the time he was doing it,
5 you didn't think it was bad, right? You thought it was
6 fun?
7 A. No.
8 MS. FILO: I'm sorry, Your Honor, objection,
9 vague as to the answer. "No," she thought it was fun
10 or "no," she didn't think it was fun.
11 THE COURT: Um, the question and answer are
12 stricken. Please ask your next question.
13 MR. SCHUMB: Sure.
14 Thank you, Your Honor, no further questions.
15 THE COURT: Is there any redirect?
16 REDIRECT EXAMINATION
17 BY MS. FILO:
18 Q. Ms. I., you said that you, um, that you would
19 taste these different things, um, when you were in the
20 classroom with Mr. Chandler; is that right?
21 A. Yes.
22 Q. And that's when you were alone?
23 MR. SCHUMB: Objection, ambiguous.
24 THE WITNESS: No. When he was there.
25 BY MS. FILO:
26 Q. I'm sorry. That's a good correction. When
27 you were -- were you alone with Mr. Chandler; is that
28 right?

1 A. Yes.

2 Q. Okay. And was the curved thing the only thing
3 where you just couldn't figure out what it was?

4 A. I didn't have to guess on that part.

5 Q. Okay, I see. Can you tell me what you mean?

6 A. Yes.

7 Q. Okay. Tell me what you mean.

8 A. Like, um, I didn't have to guess on that part,
9 like I just had to do it.

10 Q. Okay. So when you did the demonstration with
11 the whole class, you were supposed to guess what was in
12 your mouth; is that right?

13 A. Yes.

14 Q. When you were alone with Mr. Chandler, were
15 you supposed to guess what was in your mouth or were
16 you just supposed to do it?

17 A. I was just supposed to do it.

18 Q. Okay. So when you were alone in the classroom
19 with Mr. Chandler and he puts the things in your mouth,
20 did he ever say to you, Ms. I., what is that?

21 A. Um, yes. He told me, um, to, um, guess what
22 was it on the candy, but on the curved thing he didn't.

23 Q. So when he put the curved thing in, he didn't
24 say anything to you about what it was?

25 A. No.

26 Q. Did he want you to guess what it was?

27 A. No.

28 Q. Um, you said that you heard the keys. Do you

1 remember saying about the keys?

2 A. Yes.

3 Q. When did you hear the keys? At the beginning
4 of the time you were in the room with Mr. Chandler?
5 The middle? Or the end?

6 A. The beginning.

7 Q. Okay. I just want to make sure I understand.
8 Was the curved thing the only thing that you didn't
9 know what it was?

10 A. Yes.

11 Q. That was the only thing that you couldn't
12 identify?

13 A. Yes.

14 Q. Okay. Ms. I., you said that the game kind of,
15 that you were in the room with Mr. Chandler and he was
16 doing this exercise with you a lot of times, right?

17 A. Yes.

18 Q. Why did you tell your mom when you told her?
19 Why then?

20 A. I was scared, that's why.

21 Q. Okay. Did you get more scared as you kept
22 playing the game or what was it about that day that
23 made you say, I'm going to tell my mom today? Or do
24 you know?

25 A. Um, it's because, um, like I was scared, um,
26 so I just told my mom. And then like I got even more
27 scared so I know I had to tell her because a long time
28 ago she told me that, anything I needed to tell her,

1 she told me to tell her.

2 Q. That's really good advice, Ms. I., okay?

3 That's why you decided to tell your mom?

4 A. Yes.

5 MS. FILO: That's all the questions I have.

6 THE WITNESS: Okay.

7 THE COURT: Is there any recross?

8 RECROSS EXAMINATION

9 BY MR. SCHUMB:

10 Q. Um, do you remember when the last time was

11 that you played the game alone with Mr. Chandler?

12 A. No.

13 Q. Um, did you tell your mom right away after

14 that last time you played the game or did you wait a

15 little while? Or do you remember?

16 A. I don't remember.

17 Q. What scared you? What was different with the

18 last time than the times before?

19 A. I don't know.

20 Q. Didn't you tell, um, Detective Sean that it

21 was always the same?

22 A. Yes.

23 Q. So there was no difference on the last time,

24 was there?

25 A. No.

26 Q. Did you just not want to go to school that

27 day?

28 A. Yes, I didn't want to go to school.

1 Q. Why not?

2 A. Because I was scared.

3 Q. There wasn't another reason? There wasn't a
4 math test or anything like that that day?

5 A. No. It wasn't a test that day.

6 MR. SCHUMB: All right, thank you.

7 THE COURT: All right.

8 Um, Ms. I., I have listened to you very
9 carefully. I think I understand what you said so I
10 don't have any questions.

11 Is this witness excused or would either side
12 like her to remain on phone standby?

13 MS. FILO: Excused by the people.

14 MR. SCHUMB: Excused by defense, Your Honor.

15 THE COURT: All right, Ms. I., thank you very
16 much for coming to court. I appreciate everything you
17 had to tell us. You're free to go. Thank you Ms. I.

18 Do the People have an adult witness to fill
19 the rest of our time today?

20 MS. FILO: We do.

21 THE COURT: Good. I'd hate to start with
22 another child this time of day.

23 MS. FILO: I will call Luisana Villarreal.

24 LUISANA VILLARREAL:

25 COURT CLERK: Do you solemnly state under
26 penalty of perjury that the evidence you shall give in
27 this matter shall be the truth, the whole truth, and
28 nothing but the truth?

1 THE WITNESS: Yes.

2 COURT CLERK: Thank you much. Please have a
3 seat.

4 Would you please state and spell your full
5 name for the record.

6 THE WITNESS: Luisana Villarreal,
7 L-U-I-S-A-N-A, V-I-L-L-A-R-R-E-A-L.

8 THE COURT: All right, Ms. Villarreal, both
9 the attorneys will be asking you questions. I'll be
10 asking you questions. We can make the court reporter's
11 job easier if we remember to speak slowly and only one
12 person at a time and to use real words like "yes" or
13 "no" instead of "nuh-uh" or "uh-huh." If you don't
14 understand a question, you're allowed to say, I don't
15 understand, ask it again, ask it a different way.
16 Thank you.

17 Please proceed.

18 MS. FILO: Thank you.

19 DIRECT EXAMINATION

20 BY MS. FILO:

21 Q. Ms. Villarreal, are you Ms. I.'s mother?

22 A. Yes.

23 Q. She's the little girl who was just in the
24 courtroom wearing the beautiful black dress with her
25 hair pulled back?

26 A. Yes.

27 Q. Um, what is her date of birth?

28 A. November 11th, 19 -- I'm sorry, 2004.

1 Q. Okay. Where did Ms. I. start her second grade
2 year?
3 A. O.B. Whaeley Elementary.
4 Q. And was she assigned to Mr. Chandler's room?
5 A. Yes.
6 Q. Up until she started second grade, what was
7 Ms. I.'s attitude about school?
8 MR. SCHUMB: Objection, relevance.
9 THE COURT: Overruled.
10 Did you understand the question?
11 BY MS. FILO:
12 Q. Did she like school?
13 A. Yes, she did.
14 Q. How would Ms. I. get to school at O.B. Whaeley
15 in the mornings generally?
16 A. Walking.
17 Q. And with whom did she walk?
18 A. At times myself or at times with her brother.
19 Q. Did her attitude about school change after
20 this past Christmas break, so the 2011 winter break or
21 Christmas break, whatever you want to call it?
22 MR. SCHUMB: Objection, leading.
23 THE COURT: Overruled.
24 THE WITNESS: Yes.
25 BY MS. FILO:
26 Q. How did her attitude change, um, kind of after
27 that break?
28 A. Drastically. Um, her attitude towards school,

1 um, it was more like, I don't want to go to school, um,
 2 more like a little girl who, it was, she was just
 3 different. It was just different. Her way of, I mean,
 4 she would always be happy to go to school, um, ready to
 5 go to school. And now, I mean, during all this
 6 process, I mean, she's in bed, she doesn't want to get
 7 ready. Um, a lot of changes.

8 Q. Did you start to really notice those changes
 9 immediately after the Christmas break?

10 A. It was before. I noticed her different
 11 before. Um, it got worse after.

12 Q. After the Christmas break, do you remember,
 13 or, was there a time when you were walking I. to
 14 school, I'm sorry, Ms. I. to school -- strike that,
 15 Your Honor, if I may.

16 Um, and she got upset and said she needed to
 17 tell you something.

18 A. Yes.

19 Q. Can you tell me about that morning.

20 A. Sure. That morning as usual, um, I get up, I
 21 wake up my kids to go to school. Um, I., I would tell
 22 I., get dressed, hon. She's like, mom, I don't want to
 23 go to school. Um, and before, before she even told me
 24 what happened, she was already bragging about going to
 25 school. So that day, um, I said, what's wrong. She
 26 said, my stomach hurts, mom, I don't want to go to
 27 school. And I said, hon, just go to the nurse room and
 28 tell them to call me if you're not feeling good. She's

1 like, okay, mom. So she was really upset.

2 I didn't receive a call or anything that she
3 wasn't feeling good. The next day came. And same
4 thing, mom, I don't want to go to school. And I said,
5 why, hon? She's like, I'm not feeling good, mom. I'm
6 like, hon, if you don't want to go to school, then,
7 okay, just if you're not feeling good, just go to the
8 nurse, then I'll pick you up. I didn't want her to
9 have an absence so I felt guilty on that side.

10 That morning when we were walking out and I
11 told her that, she pulled me back. And she told me,
12 mom, I have to tell you something. And I said, what,
13 hon? She's like, I need to tell you something that
14 Mr. Chandler does to me.

15 Q. I'm going to stop you there.

16 MR. SCHUMB: I'm going to object as hearsay,
17 Your Honor, move to strike.

18 THE COURT: Um, I make a finding that the
19 time, content, and circumstances of the statement
20 provide indicia for reliability. The disclosure
21 appears to be initiated by the hearsay declarant.

22 Would you like to add something?

23 MR. SCHUMB: Just that I'm going to have a
24 continuing objection.

25 THE COURT: Of course there's a continuing
26 objection.

27 MR. SCHUMB: Thank you, Your Honor.

28 \\\

1 BY MS. FILO:

2 Q. After Ms. I. pulled you back and said I have
3 to tell you something, what was she like? What was her
4 demeanor like?

5 A. She was crying. She, she was mumbling, um,
6 she looked up at me and said, I need to tell you
7 something that Mr. Chandler does. And I said, what,
8 hon? What do you mean? She said, something, mom. And
9 I said, what, hon, tell me. She said, mom, like I
10 should know. So I pulled her back in the house and she
11 sat down on the couch and I was on my knees like
12 listening to her. And from there she went on to tell
13 me everything that was going on. She told me that
14 Mr. Chandler would do stuff to her that she doesn't
15 like. And she said, mom, she said, mom, he does
16 something that I don't like. And I said, what do you
17 mean? What does he do? From there she went into
18 detail.

19 Q. When you say she went into detail, what did
20 she tell you?

21 A. She told me that he would put something in her
22 mouth. That's what she said. She said she would
23 put -- he put something in my mouth and I don't like
24 it, mom. And I said, what do you mean? What does he
25 put in your mouth? And she said, well, mom, how can I
26 tell you, mom? He just makes me do stuff and I don't
27 like it. He doesn't let me go to recess, mom. And
28 then by the time he lets me go, my recess is almost

1 gone. So I kind of, I just broke because I'm an
2 adult. And I know what my daughter was trying to tell
3 me, but yet, because she's a little girl, she doesn't
4 know exactly how to, I mean, how to say it, obviously.

5 Q. When you say that she, you knew what she was
6 trying to tell you, did she ever describe what
7 Mr. Chandler would put in her mouth?

8 A. She just said something long and round.
9 That's what she said because I did ask her. I asked
10 her if it's something wet, is it something dry. And
11 she said, um, sometimes. I'm like, did it taste
12 nasty? Did it have a flavor to it? Did it taste, um,
13 was it food? Was it, she said, no, mom. He just put
14 something in my mouth and he makes me turn my tongue
15 and he says, I., move your tongue around.

16 Q. Other than saying the thing was long and
17 round, did she say anything else about what it was that
18 he put in her mouth?

19 A. She just said she felt like, um, gagging, um,
20 because I asked her was it, I gave her examples as in
21 is it bigger than my thumb. How big do you think it
22 was? Did you touch anything, and she said, no. She
23 just said that it was, she felt very uncomfortable, she
24 didn't like it. I asked her if it tasted like anything
25 and ...

26 Q. What did she say to that question?

27 A. Um, she just said that not always, it was the
28 same. At times it would taste like nothing and then at

1 times, one time she told me it tasted like strawberry
2 that time, so, um, to me, um ...

3 Q. Can you remember anything else about what, how
4 she described what Mr. Chandler was putting in her
5 mouth? It's okay if you can't. I just want to make
6 sure I'm giving you a fair opportunity to answer. Is
7 that all you remember?

8 A. Yes.

9 Q. Okay. Did she talk to you about whether she
10 could see anything when this was happening?

11 A. No, she'd never seen anything.

12 Q. Did she tell you whether her eyes were covered
13 in some way?

14 A. Yes.

15 Q. What did she tell you about that?

16 A. She told me that, um, that he would tell her
17 to, um, use a scarf, like they would use her scarf and
18 he would use, um, a blanket. I guess they have a toy
19 box or chest at school. That's why she never seen
20 anything.

21 Q. Did she describe the object as kind of big and
22 kind of hard?

23 A. Yes.

24 Q. Did she tell you, um, when these things had
25 happened in relationship to Christmas break?

26 A. Before. I know before Christmas. Um, um, I
27 don't remember the exact dates, but they had a, um -- a
28 talent show at school and it had already happened

1 because I asked her, was this happening before your
2 talent show or after so I could have an idea of how
3 long this was going on for. And she told me that it
4 was happening before because they would do practicing
5 at school. They would practice their music and
6 practice with popcorn and definitely it was happening
7 way before Christmas break.

8 Q. When you say that she was practicing at
9 school, she was practicing for her talent show?

10 A. Yes. They would sing in class.

11 Q. Was that happening during school hours or did
12 she stay after school? When was she doing the
13 practicing?

14 A. No. I believe the practicing was during
15 school hours, yeah.

16 Q. What did you do after Ms. I. told you, um,
17 what you've just described? What did you do with that
18 information?

19 A. Like any mother should do. Um, I left my kids
20 at home and I drove to school, even if, just, I live a
21 block away. I drove to school. And, I mean, I was
22 full of anger. I felt like going directly to his
23 classroom, but I didn't. I went through the office
24 room. And the first person I see was the principal.
25 The assistant principal, actually. She's the
26 assistant. And, um, I started yelling like crazy.

27 Q. When you say you saw the assistant principal
28 is that, Leah Peery? Does that name sound right?

1 A. Yes, her.

2 Q. You said you started yelling.

3 A. Yeah.

4 Q. Okay.

5 A. I started yelling bad language. And she
6 stepped me into her office and she told me to explain
7 to her everything that was happening. And she told me
8 if I can bring I. in so she could write down on her
9 notes and I said, yeah. Well, at that time I stepped
10 into her room, she told me, she said, oh, my God not
11 again. I said, what do you mean not again? I mean, I
12 was already mad and yelling and she said, well, we just
13 had a conference with another little girl about the
14 same whole situation so it got me even more mad
15 because, I don't know, if it could have been prevented,
16 only God knows. I mean, maybe it wouldn't have
17 happened to my daughter or, I mean, a lot of thoughts
18 came in because I don't know how long this was going on
19 for.

20 Q. Okay. When you stepped in and, um, talked to
21 Ms. Peery in the office area, she asked you to bring
22 Ms. I. back to school?

23 A. Yes.

24 Q. Did you do that?

25 A. I did.

26 Q. And did Ms. I. tell Ms. Peery what had
27 happened?

28 A. Yes.

1 Q. What did she tell Ms. Peery?

2 A. Exactly what she told me at home she told
3 Ms. Peery. And she was there. Um, at that time, the
4 principal was absent because, um, she was, I think she
5 was on maternity leave so there was another assistant
6 there and so he was there and Ms. Peery. And she told
7 me the psychologist was going to be there, but she
8 didn't arrive there on time. My daughter was already
9 talking about the whole situation. So when the
10 psychologist walked in, it was maybe for about five
11 minutes.

12 Q. So Ms. I. told Ms. Peery the same thing that
13 she told you that morning and that is what you already
14 described here in court.

15 A. Yes.

16 Q. Okay. What did you do after Ms. I. told
17 Ms. Peery what had been happening? Where did you go or
18 what did you do from there?

19 A. Well, I was, I was really upset, um, because
20 when the psychologist walked in there, I didn't feel I
21 was maybe being helped the way that I should have been
22 helped. Um, I felt that this situation had already
23 happened to somebody else and it wasn't resolved. And
24 something could have been resolved. When the
25 psychologist listened to my daughter say the whole
26 thing, she just put her hand on the table like this and
27 said, so now what are we going to do, like come on. I
28 mean, don't you know your job? Don't you know your

1 responsibility? I was upset. I got up. And I was
2 pissed off. And I told her, you don't know what you're
3 going to fucking do? I know what I'm going to do.
4 Excuse my language.

5 THE COURT: It's all right. I've heard it
6 before.

7 THE WITNESS: Okay. I got up and I took my
8 daughter. I went straight home and I called the
9 police.

10 BY MS. FILO:

11 Q. Did you bring Ms. I. down, um, for an
12 interview with the San Jose Police Department?

13 A. Um, they went to my house.

14 Q. They came to your house first?

15 A. Yeah.

16 Q. Do you remember what, approximately what time
17 it was that you spoke to Ms. Peery, um, after Ms. I.
18 gave you this information?

19 A. Yes. Um, maybe around 8:45, 9 o'clock,
20 something like that, in the morning.

21 Q. And then you had this discussion with
22 Ms. Peery, got home, and then contacted the police?

23 A. Well, my first, the first time I went to talk
24 to Ms. Peery was around 2:45, 9 o'clock in the morning,
25 not quite sure about the time. Um, then when she sent
26 me back to get I., she said, I'll call you in half an
27 hour to see if we can have a meeting with the
28 psychologist and the principal and stuff so we can get

1 things done. I said, fine. Um, it didn't happen in
2 half an hour, 45 minutes later passed by and that's
3 when I went back to the office with I. And it was
4 about, I would say 10, 10:30. I'm not quite sure about
5 the time.

6 Q. So from the time Ms. I. disclosed, gave you
7 this information to the time you called the police, two
8 and a half hours, three hours, something like that?

9 A. As soon as I was done with, um, talking with
10 Ms. Peery and them there, I went home. It only took
11 me, I mean, it takes me like three minutes to get
12 home. And I called the cops right away.

13 Q. All right. And about -- do you have any idea
14 about what time the police came and made contact with
15 you at your house, how long after you called?

16 A. Um, I didn't take time. I can guess. Maybe
17 about 15 minutes at the most. It didn't take long at
18 all.

19 Q. So it wasn't like four hours or anything.

20 A. No. They got there really quick.

21 MR. SCHUMB: Your Honor, I don't know if we
22 have any more questions on this, but the objection is
23 that it's a somewhat irrelevant line and it's close to
24 the end of the day and I want some time to cross
25 examine this witness.

26 THE COURT: Overruled. Please ask your next
27 question.

28 MS. FILO: Your Honor, I think that's all the

1 questions I have.

2 THE COURT: Cross exam please?

3 MR. SCHUMB: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. SCHUMB:

6 Q. Ma'am, um, had your daughter, um, ever
7 complained of stomach problems before this day in
8 January of 2012?

9 A. Yes.

10 Q. Um, has she been sick before and not gone to
11 school?

12 A. Never.

13 Q. Has she been late getting to school?

14 A. Yes.

15 Q. Um, does she have chronic tardy problems?

16 A. She did have occasional tardy problems.

17 Q. And why was she telling you she didn't want to
18 go to school?

19 A. Because she was not feeling good.

20 Q. Was the tardy problems just this year, 2011/12
21 school year or was it also the year before?

22 A. Um, it wasn't really a tardy problem if you're
23 counting from this year and last year, but this year it
24 really went up.

25 Q. Okay. But she was not wanting to go to school
26 in the 2010/2011 school year, right?

27 A. Can you repeat that question?

28 Q. Sure. She had times when she said, I don't

1 want to go in the 2010/2011 school year too.
2 A. No. Never.
3 Q. Never?
4 A. No. When she was a first grader? No.
5 Q. Never said she had a stomach ache?
6 A. She never complained about going to school.
7 Q. And she wasn't tardy in the 2010/11 calendar
8 year?
9 A. Maybe she was..
10 Q. Yeah, was she tardy?
11 A. Because they count as tardy one minute late,
12 two minutes late. To them, it doesn't matter.
13 Q. That was because you didn't get her there on
14 time?
15 A. Right.
16 Q. It wasn't she didn't want to go?
17 A. Right.
18 Q. Then, um, this school year, 2011/2012, you
19 said you noticed that there was this change in her
20 attitude about going to school?
21 A. Yes.
22 Q. And when did you notice that? First notice
23 that?
24 A. Um, I first noticed it during November, the
25 month of November. That's when she kept, she wasn't
26 quite comfortable.
27 Q. How many times -- did you keep her home from
28 school any of those times?

1 A. No.

2 Q. Was she tardy any of those times?

3 A. I'm sure she was.

4 Q. And did you talk to anybody about it?

5 A. No.

6 Q. Why not?

7 A. Why would I? Who would I talk to about it?

8 Q. Counselor, vice principal, teacher, pastor,

9 pediatrician?

10 A. It wasn't a problem with my child at that

11 moment. If it was a major problem, then I would have

12 thought, then, yes, I would have definitely sought for

13 a counselor if I seen that my daughter was, that there

14 was something extremely wrong with her. But she was a

15 perfectly fine little girl.

16 Q. So then do you remember the date that this all

17 happened, this all came to light this year?

18 A. Do I remember the date?

19 Q. Yeah, the day, the day of the year that you

20 discovered this issue.

21 A. I believe it was January 6. I could be

22 wrong. I'm not sure.

23 Q. Okay. So I think January 9th is the day that

24 you came down to school and complained that I. didn't

25 want to go to school.

26 A. That's the day. That's the day that I went to

27 school. That's the day that she told me, that's the

28 same date.

1 Q. But the 6th, was that the time when you think
2 that your daughter was molested by Mr. Chandler?
3 A. No. I think it happened before.
4 Q. Before the 6th?
5 A. Of course.
6 Q. Did your daughter complain to you that it had
7 happened on the 6th?
8 A. No.
9 Q. What was the 9th? Was that a Monday?
10 A. No. I think the 9th was a Wednesday or
11 Thursday. I'm not quite sure.
12 Q. Did your daughter say when the last time it
13 was -- strike that. On or about the 9th of January of
14 2012, that was the first time your daughter made this
15 disclosure to you about what Mr. Chandler was doing
16 with her allegedly, right?
17 A. Can you repeat that question?
18 Q. Sure. The 9th of January of 2012 is the first
19 time that your daughter ever disclosed to you that
20 Mr. Chandler was doing something bad to her or
21 something she didn't like?
22 A. Yes.
23 Q. Okay. Prior to that, she never said a word?
24 A. No.
25 Q. Did your daughter, um, tell you when the last
26 time was that Mr. Chandler had played this game with
27 her and put something in or mouth on the 9th of
28 January?

1 A. No. She just said, um, that was when we came
2 back from break so she wouldn't know exactly what day
3 it had happened.

4 Q. Whether she knows or not, I'm just asking what
5 she told you, okay? So my question is, did Ms. I., um,
6 tell you on the 9th of January 2012 when the last time
7 was that Mr. Chandler had done this to her?

8 A. She just said -- I don't remember what she
9 said. I could -- let me think. She said, "the other
10 day," but, um, exact date I don't remember.

11 Q. Did she say Friday? Did she tell you last
12 Friday?

13 A. I don't remember exactly the date she said.

14 Q. Were you there when she was statementized by
15 Ms. Peery, Mr. Lara and the school psychologist?

16 A. Yes.

17 Q. She give a date during that conversation?

18 A. I don't remember that.

19 Q. Did you have the sense that it just happened?

20 A. Yes.

21 Q. Like within a week of when she disclosed?

22 A. Yes. Like I sensed, I don't remember. I
23 mean, I don't know when it last happened. But I'm
24 thinking the day she came back from break she didn't
25 want to go back to school because she said, "just the
26 other day, mom," so ...

27 Q. And, um, have you talked to a lawyer about
28 filing a lawsuit against the school district?

1 A. No.

2 Q. Now, um, you testified that she told you that,
3 um, Mr. Chandler had choked her.

4 A. Excuse me?

5 Q. Did Ms. I. tell you that Mr. Chandler had
6 choked her when he was playing this game with her?

7 A. Choked her?

8 Q. Do you know what it is to choke?

9 A. Choke to me is like this [sound] so, I mean,
10 choking can be with an object as well, but she gagged.
11 She said that she [sound] like that.

12 Q. You were interviewed by Mr., Detective Pierce
13 at some point. Do you remember that?

14 A. I was.

15 Q. Were you interviewed by the police officer
16 here?

17 A. Yes. Yes.

18 Q. Was that just one time or a couple times?

19 A. Oh, no, just one time.

20 Q. Have you talked to him since then?

21 A. No.

22 Q. How many times have you talked to the district
23 attorney, Ms. Filo?

24 A. She contacted me about the court date this
25 last time. Um, she left me a voice message reminding,
26 on Sunday, she left a voice message on my phone.

27 Q. You've never talked to her prior to today,
28 just a voice mail?

1 A. Yeah, I did.
2 Q. You talked to her or you didn't?
3 A. Yes, I did.
4 Q. Did what? Talk to her?
5 A. Yes.
6 Q. How many times?
7 A. One time.
8 Q. When was that?
9 A. Two. Actually, two when she did a court
10 visiting room, yeah.
11 Q. Who's been your primary contact regarding this
12 issue with the District Attorney's office?
13 A. Um, I have a witness person, a victim witness,
14 um, her name is Elvia so I get in contact with her.
15 Q. How often do you talk to her?
16 MS. FILO: Objection, Your Honor, relevance.
17 THE COURT: Offer of proof please?
18 MR. SCHUMB: I'm just trying to find out what
19 communication there's been between the D.A.'s with
20 respect to the story and other issues, so right now I'm
21 just getting some background. I'll move on if you
22 like.
23 BY MR. SCHUMB:
24 Q. All right. So, um, do you remember when you
25 gave your statement to Detective Pierce?
26 A. I don't remember the date.
27 Q. Was it the day of the disclosure?
28 A. Yes.

1 Q. Okay.
2 A. Oh, yes.
3 Q. What's that day?
4 A. 9th.
5 Q. January 2012?
6 A. I'm sorry, this is so overwhelming.
7 THE COURT: It's all right. We have do-overs
8 here.
9 THE WITNESS: Okay.
10 THE COURT: If you want to add something, you
11 can do it at any time.
12 THE WITNESS: Thank you.
13 BY MR. SCHUMB:
14 Q. Please, if there's something you remember
15 later, you can let me know. If there's a question you
16 don't understand or I'm going too quickly, feel free --
17 you've done a good job so far -- I'll be more than
18 happy to repeat myself or clarify myself. I'm not
19 always the clearest.
20 How did it come to be that you went down to
21 the police station to give a statement? Did you drive
22 down?
23 A. Yes, I drove.
24 Q. Did you take Ms. I. with you?
25 A. Yes.
26 Q. Okay. And who got statementized first? You
27 or her?
28 A. Um, I think it was me.

1 Q. And were you there when Ms. I. was
2 statementized?
3 A. No.
4 Q. And what did you tell Detective Pierce,
5 everything that Ms. I. had told you?
6 A. I told him everything.
7 Q. Looked like it was a pretty thorough review.
8 You understand it was tape recorded, right?
9 A. I would assume so.
10 Q. Have you had a chance to look at that
11 transcript?
12 A. No.
13 Q. Has anybody told you what's in it?
14 A. No.
15 Q. Um, in that transcript, did you tell him that,
16 um, I guess the two most important factors were that,
17 um, Ms. I. -- let me just go back. On the date that --
18 that morning of the 9th when she told you what had
19 happened, um, at one point in the conversation, you
20 broke down crying in front of Ms. I., right?
21 A. Yes.
22 Q. Okay. And were you sobbing? I mean, really
23 upset?
24 A. Definitely.
25 Q. Okay. And, um, that was before you went back
26 into the house, right? Was this still when you were
27 outside?
28 A. Before I went to the school?

1 Q. No. Before you went back into the house?
2 A. At what time? Can you repeat that please?
3 Q. Sure. When you were walking her to school and
4 she started telling you about this, didn't you get
5 really upset and just break down crying as she's tell
6 the story?
7 A. No. We walked -- as soon as I walked out of
8 the door, about three steps from my door, she pulled me
9 back.
10 Q. Okay.
11 A. And that's when she started, she told me. She
12 said, mom, she said, I need to tell you something,
13 mom. Her eyes. She wanted to cry. I said, what? I
14 need to tell you something, mom, what Mr. Chandler did
15 to me. I said, what, hon? I took her back inside.
16 Q. Okay.
17 A. So we didn't walk a distance. It was about
18 three steps from my door.
19 Q. Sorry, okay. Then you started to ask her what
20 had happened, right?
21 A. Yes.
22 Q. Then at one point, um, you started crying.
23 A. In the house, yes.
24 Q. What made you cry?
25 A. What she was saying.
26 Q. What about what she was saying?
27 A. What Mr. Chandler was doing to her.
28 Q. Specifically, what did she say that made you

1 break down and cry?

2 A. When she said that he was putting something in
3 her mouth that she didn't like.

4 Q. Um, now, you're aware of the Helen Keller unit
5 that he was teaching?

6 A. No.

7 Q. You didn't?

8 A. What is that?

9 Q. Um, it's a unit where you study Helen Keller
10 who was a deaf and blind woman and what it's like to
11 live without senses and how that can be kind of scary
12 and how people can overcome it so that, when you see
13 people that have disabilities, you don't think less of
14 them or mock them or think that somehow they're
15 inferior. That's what the unit's designed to teach the
16 kids.

17 A. I was never notified of that.

18 Q. Now, there were some parents that did go to
19 the, heard your daughter's testimony today, correct?

20 A. I was not in here.

21 Q. I'm sorry, that's right. Witnesses were
22 excluded. Okay. Um, did your daughter ever tell you
23 about the fact that they were doing this in the
24 classroom in front of all the kids?

25 A. No.

26 Q. Being blindfolded and putting things in their
27 mouth?

28 A. No.

1 Q. Would you have had problem with that if you
2 knew about it?

3 MS. FILO: Objection, calls for speculation,
4 irrelevant.

5 THE COURT: Sustained.

6 BY MR. SCHUMB:

7 Q. Did the -- um, did you talk to any other
8 parents that were there? Because I believe there were
9 quite a few parents.

10 A. About what?

11 Q. That watched the Hellen Keller demonstration?

12 MS. FILO: Objection, assumes facts not in
13 evidence, calls for hearsay.

14 MR. SCHUMB: I'll withdraw it, Your Honor.
15 Let me lay the foundation.

16 BY MR. SCHUMB:

17 Q. Do you know the parents of some of the other
18 classmates that Ms. I. had when she was taking
19 Mr. Chandler?

20 A. No. I don't know any of the parents.

21 Q. Okay. Um, all right. So on the date of the
22 disclosure, um, you don't remember -- do you remember
23 specifically what made you cry when you were talking to
24 Ms. I. or was it just the whole description?

25 MS. FILO: Objection, asked and answered.

26 THE COURT: Sustained.

27 BY MR. SCHUMB:

28 Q. Did -- was it the fact that she described the,

1 um, object? I think you said it was long and round.

2 MS. FILO: Objection, asked and answered.

3 THE COURT: Sustained.

4 MR. SCHUMB: I don't believe I've asked that
5 question.

6 THE WITNESS: You did.

7 THE COURT: Sustained.

8 BY MR. SCHUMB:

9 Q. Um, was it the description of what had
10 happened or just the fact that he blindfolded her that
11 made you break down and cry?

12 MS. FILO: Objection, asked and answered.

13 THE COURT: Sustained.

14 MS. FILO: Fourth time.

15 BY MR. SCHUMB:

16 Q. Um, how long did you cry for when you cried in
17 front of Ms. I. that day?

18 A. I was trying to hold myself really hard
19 because I didn't want her to know, to realize what he
20 had done. I would say when I, I just let it all out
21 for about maybe five minutes.

22 Q. Did you say -- did Ms. I. say anything to you,
23 ask you why you were crying?

24 A. Yes.

25 Q. What did she tell you?

26 A. I said, it's okay, hon. Don't worry about it.
27 That's all I told her.

28 Q. Okay. Now, um, did you tell Detective Pierce

1 that Ms. I. told you that the thing that Mr. Chandler
2 allegedly put in her mouth was round and long? Did you
3 use those two words?

4 A. She said, um, round, hard, um, something big.

5 MR. SCHUMB: Move to strike as nonresponsive,
6 Your Honor.

7 THE COURT: Overruled.

8 BY MR. SCHUMB:

9 Q. Did you tell Detective Pierce that Ms. I. told
10 you that what Mr. Chandler put in her mouth was round?

11 A. Yes.

12 Q. Did you tell Detective Pierce that what Ms. I.
13 put in -- strike that. Did you tell Detective Pierce
14 that what Mr. Chandler put in Ms. I.'s mouth was long?

15 A. I could have said long, but I meant to say
16 big, but, yes.

17 Q. Now, um, did you tell Detective Pierce that
18 Ms. I. didn't wear scarves currently?

19 A. She was. She didn't want to wear them
20 anymore.

21 Q. When did she stop wearing scarves?

22 A. Before Christmas. Before Christmas break.

23 Q. And you sort of told that to Detective
24 Pierce. Did you give a date to him or just say that
25 she wasn't wearing them anymore?

26 A. She was just telling me she didn't know where
27 it was at. She was telling me I don't know where it's
28 at.

1 Q. So then if the last time that Ms. I. played
2 the game with Mr. Chandler one on one and if her
3 account that he tied her scarf around her head is true,
4 that had to happen sometime before Christmas of 2011,
5 correct?

6 MS. FILO: Objection, Your Honor, multiple
7 levels of speculation.

8 THE COURT: Sustained.

9 BY MR. SCHUMB:

10 Q. Well, isn't it true that the last time Ms. I.
11 wore a scarf to school was prior to December of 2011?

12 A. She wore a scarf, I don't remember the exact
13 date when she wore a scarf. But I know that, um, she
14 didn't want to wear them anymore. And this was before
15 she told me what had happened.

16 Q. Okay. Um, since you were the first person to
17 talk to Ms. I. about what happened, was it your
18 understanding from what she described -- and,
19 obviously, we don't have a tape recording of it so we
20 have to rely on you. Was it your understanding that
21 the last time the incident occurred was sometime prior
22 to Christmas?

23 A. Can you repeat that please?

24 Q. Sure. Based on Ms. I.'s report to you on or
25 about the 9th of January, 2012, was it your
26 understanding from that initial report that the last
27 time Mr. Chandler had allegedly put an object in her
28 mouth was sometime prior to Christmas break of 2011?

1 A. It could have happened that same week, so I
2 don't know.

3 Q. Okay, but I just want to know what your
4 understanding, your impression --

5 A. My impression was it happened just the other
6 day, just recently, just that week. That was my
7 understanding.

8 Q. Isn't it true Ms. I. didn't wear a scarf to
9 school when she came back from Christmas break, right?

10 A. I don't recall.

11 Q. Did you tell Detective Pierce that she didn't
12 wear scarves anymore?

13 A. Yes.

14 Q. What did that mean? Did that mean in the last
15 two weeks or three weeks or month?

16 MS. FILO: Objection, Your Honor. He's
17 badgering the witness over the same issue. It's asked
18 and answered.

19 THE COURT: Sustained. Please ask your next
20 question.

21 BY MR. SCHUMB:

22 Q. Um, do you remember, do you remember, um,
23 Detective Pierce -- um, do you remember saying to
24 Detective Pierce, um, and I asked her did you kind of
25 choke or something and she said no. Did you ever tell
26 that statement to Detective Pierce?

27 A. I did.

28 Q. I thought you just said that she never told

1 you that she choked.

2 A. Well, the word "choked," again, I could have,
3 um, mis -- um, she kind of choked [sound] like that.
4 She choked. I did say that, yes.

5 Q. Are you saying now that you meant something,
6 other than choked on the object? Is that your
7 testimony?

8 A. No. Now I know that if I say choke, it's like
9 choke. So when I told that to the detective, she kind
10 of choked like [sound] like it was [sound] like that.

11 THE COURT: This would be a good time for us
12 to take our recess.

13 Ms. Villarreal, I will tell you what I tell
14 everybody. You're not allowed to discuss your
15 testimony with anyone. Um, nor is Ms. I. allowed to
16 discuss her testimony with you. You can talk about the
17 experience of going to court, but not about what you
18 said on the stand and not what she said on the stand.
19 Then we'll start up again at 9 o'clock tomorrow.

20 I'm told that we've been sent another case
21 which is going to be here for scheduling purposes
22 only. If the attorneys are on time and if they get to
23 the point, we'll start as soon as after 9 o'clock as we
24 can. Thank you very much.

25 Is there anything else either counsel wants to
26 put on the record before we go to recess?

27 MS. FILO: No, Your Honor.

28 THE COURT: Mr. Schumb?

1 MR. SCHUMB: No, thank you.

2 THE COURT: Thank you very much. We'll start
3 again at 9 in the morning.

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1 State of California)
2 County of Santa Clara) SS.
3

4 I, Denise M. Nebolon, do hereby certify that:

5 I am an Official Court Reporter of the
6 superior court of the State of California in and for
7 the County of Santa Clara; and that, as such, I
8 reported in stenotype and thereafter transcribed
9 through computer-aided transcription as herein appears
10 the above proceedings and that the same is a full,
11 true, and correct transcription of said stenotype as
12 reported by me to the best of my ability.

13 I further certify that I have complied with
14 Code of Civil Procedure Section 237(a)(2) in that all
15 personal juror identifying information has been
16 redacted, if applicable.

17 Dated: June 3, 2012

18 
19 _____

20 Denise M. Nebolon, CSR 9344
21
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28

EXHIBIT 1

(Vol. 2)

COURT OF APPEAL, STATE OF CALIFORNIA,
IN AND FOR THE SIXTH APPELLATE DISTRICT

THE PEOPLE,

V.

CRAIG RICHARD CHANDLER

PLAINTIFF AND
RESPONDENT,

DEFENDANT AND
APPELLANT.

COURT OF APPEAL NO.: H040429

VOL. 2 of 7

PAGES 181 thru 352

CLERK'S TRANSCRIPT

CLERK'S TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA.

SUPERIOR COURT NUMBER: C1223754

HONORABLE ARTHUR BOCANEGRA, JUDGE

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NOTICE OF APPEAL FILED November 22, 2013

NOTICE OF COMPLETION JAN 29 2014

In the Superior Court of the State of California
In and for the County of Santa Clara



The People of the State of
California,

Plaintiff,

vs.

Craig Richard Chandler,

Defendant(s).

Case No. C1223754

Reporter's Transcript of Proceedings

May 22, 2012

Before the Honorable Michele McKay McCoy

Preliminary Examination

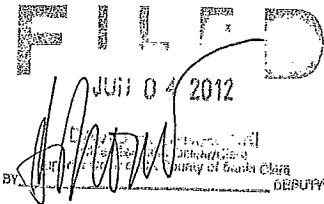
Volume II of III

Pages 181 through 352

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1 May 22, 2012

2 P R O C E E D I N G S

3 THE COURT: Thank you. Um, returning to the
4 Chandler case. We were in the middle of
5 Ms. Villarreal's testimony.

6 LUISANA VILLARREAL, having been previously
7 been sworn to tell the truth, testified as follows:

8 I remind you that you're still under oath.
9 Go ahead, sir.

10 MR. SCHUMB: Thank you.

11 CONTINUED CROSS EXAMINATION

12 BY MR. SCHUMB:

13 Q. Thank you for coming back, Ms. Villarreal.
14 I'LL try to make this as quick as I can. Did you talk
15 to Ms. I. last night about her testimony?

16 A. No.

17 Q. Now, did you ever discuss with I., um, or,
18 strike that. Did Ms. I. ever tell you that the object
19 that Mr. Chandler put in her mouth was round? Did she
20 tell you that?

21 A. Um, yes.

22 Q. Okay. When was the first time she told you
23 that? If you recall.

24 A. The day she told me this incident happened.

25 Q. Has she repeated that to you since then?

26 A. I haven't talked to her about anything.

27 Q. So since the first day, since the 9th of
28 January of 2012, you never discussed the incident with

1 her since then?

2 A. I have not.

3 Q. And, um, when she -- did she ever tell you

4 that the object was curved?

5 A. No.

6 Q. Did she ever tell you that the object, um, was

7 in her mouth every time they played the game?

8 A. Yes.

9 Q. Sure about that?

10 A. Yes.

11 Q. Um, and that's played the game alone.

12 A. Yes.

13 Q. Was she clear about that?

14 A. Yes.

15 Q. Was she -- Okay. Um, did you ever discuss

16 with her or did she ever tell you, I guess, that she

17 could tell where Mr. Chandler was by feeling how close

18 his presence was to her?

19 A. Yes.

20 Q. And did she tell you how she knew that?

21 A. I asked her if he was far and she said no, he

22 was close. And I said, can you hear him. She said

23 yes. That's when he would tell me to move my tongue

24 around. And I got in front of her to kind of have an

25 idea of how far. And from what she told me, he was in

26 front of her.

27 Q. Okay. And that was the only conversation you

28 had with her was on the 9th of January 2012 so that's

1 when that occurred, right?

2 A. Yes.

3 Q. Did you tell that to Officer Pierce?

4 A. What?

5 Q. What you just testified about, her knowing how
6 close he was to her by his voice.

7 A. Yeah, by his voice and because he was putting
8 his hand on her head.

9 Q. Okay. You told that to Officer Pierce?

10 A. Yes.

11 Q. And did she tell you where her hands were when
12 this was all happening whenever she played the game?

13 A. She told me he would put his hand on her head
14 and say go ahead, move your tongue around.

15 Q. I'm sorry, I wasn't clear. Where did she tell
16 you her hands were?

17 A. Oh. No, her hands were just -- she told me
18 that her hands were just on the chair.

19 Q. Okay. That was during each one of the times
20 that they played the game?

21 A. Yes.

22 Q. And did she tell you that -- um, um, did she
23 explain to you that this was a game and that there were
24 different objects that were put in her mouth? Or did
25 she just say the curved object was the only thing put
26 in her mouth?

27 A. She said there was never anything else in her
28 mouth, but that same thing.

1 Q. Except for the curved object.
2 A. Yes.
3 Q. So Ms. I. told you, um, that no other object
4 was put in her mouth whenever she played the game alone
5 with Mr. Chandler, except for the curved object.
6 A. Yes.
7 Q. Sure about that?
8 A. Yes.
9 Q. Did you ever tell -- um, did she tell you
10 that, um, he also put candy in her mouth and chocolate
11 in her mouth and other things?
12 A. She told me that, um, they had something going
13 on with all the other students in class.
14 Q. I get it. So she told you that candy was used
15 with other students, but not with her.
16 A. I don't remember her saying candy and
17 chocolate and stuff like that, but she said that they
18 did the, they did the, um, tasting thing with the whole
19 class.
20 Q. Okay, got it. Got it. Okay. So she told you
21 about the tasting thing with the whole class, but when
22 he used other food items, but when it came to just her
23 and Mr. Chandler alone, it was just the curved object,
24 correct?
25 A. Well, it was the same thing. It was never
26 tasty stuff. Yeah.
27 Q. So she did tell you about using the food
28 objects in the class with other kids, right?

1 A. She just said, because I asked her, did you
2 guys do it during class. Did everybody do it with the
3 whole class. She said, yes, we do it with the whole
4 class, um, I don't remember how many times she said it
5 happened or if it just happened once. But I don't
6 remember what did they do it with in class. I don't
7 remember what she told me, what did they use in class.
8 Q. Okay. When I asked you earlier, you seemed to
9 remember candy and chocolate. Did she ever mention
10 chocolate and candy with respect to what was happening
11 in the classroom with all the other kids?
12 A. I don't remember. Honestly, I don't.
13 Q. Um, and, um, I assume you're interested in
14 seeing the truth come out, right?
15 A. Definitely.
16 Q. You've cooperated absolutely with everything
17 the police and the district attorney have asked you to
18 do?
19 A. Yes, I have.
20 Q. How many times has Ms. I. been talked to by
21 the police or Ms. Filo?
22 A. How many times has what?
23 Q. How many times has Ms. I. been talked to the
24 by the police or by Ms. Filo?
25 A. Um, when she was, when she was -- what do you
26 call it -- interrogated, I don't know, about two, three
27 times. I really don't remember how many times.
28 Q. Well, there was the time on the 9th of January

1 2012 when you went to the police department. That's
2 one time.

3 A. Yes.

4 Q. How many times after that since the 9th of
5 January 2012 have the police talked to your daughter,
6 Ms. I.?

7 A. One time.

8 Q. When was that?

9 A. When the officer was questioning her about
10 what she had testified at the place we went at the,
11 um --

12 MS. FILO: Child Interview Center.

13 THE WITNESS: The Child Interview Center.

14 MR. SCHUMB: Your Honor, if I could have the
15 witness testify and not have assistance from counsel?
16 I think that's appropriate.

17 THE COURT: I want to take into account what
18 the witness says. Attorneys can't give evidence.
19 Thank you.

20 BY MR. SCHUMB:

21 Q. Two times you're aware of Ms. I. was
22 interviewed the first time January 9th, 2012, and there
23 was a second time.

24 A. Um, yes.

25 Q. Okay. When was that? If you don't know the
26 date, you can tell me relative to the January 9th
27 interview or to this court case, whatever's closer.

28 A. Um, I think it was the next day. I think.

1 I'm not sure. I'm really not sure on the date. I
2 don't know.

3 Q. Shortly after the January 9th, 2012,
4 interview, Mr. Pierce came out to your house and
5 interviewed Ms. I. again?

6 A. Um, I had to put my daughter, um, at a
7 different place because of all this incident going on.
8 Um, I took her to my sister's house and, um, that's
9 where she was asked to make sure that what she said in
10 the interview was the same.

11 Q. Can I get that question reread, Your Honor?
12 I'm sorry, I lost the answer.

13 (The requested record is read.)

14 BY MR. SCHUMB:

15 Q. So she was statementized again at your
16 sister's house?

17 A. Yes.

18 Q. And that was a day or two after the 9th of
19 January 2012?

20 A. Um, yes, I don't remember how -- yes.

21 Q. But nobody's talked from the police or the
22 district attorney talked to Ms. I. in the last two
23 weeks, three weeks?

24 A. No.

25 Q. Um, did, um, um, did our investigator come by
26 to talk to you and talk to Ms. I.?

27 A. Yes.

28 Q. When was that, a couple weeks ago?

1 A. It was a Saturday, um, a week ago, like on --
2 something like that.

3 Q. Did Ms. I. give a statement at that time?

4 A. No, I didn't allow her to.

5 Q. Why not?

6 A. Because I don't want this refreshing her
7 memory all the time. It's already hard enough for me
8 to go through this. And to have my daughter testify
9 once again and again and again, she's a bright little
10 girl. She's never going to forget this. Never.

11 Q. Were you the one that told her that it was
12 bad, something bad happened to her?

13 A. I had -- I didn't talk to her about what
14 Mr. Chandler did was bad until she had to come to
15 court.

16 Q. Okay. When did you tell her that what
17 Mr. Chandler did to her was bad?

18 A. I told her what Mr. Chandler did was not
19 right. It was bad, so ...

20 Q. When did you tell her that?

21 A. Before she had to come to court.

22 Q. When was that? Day? Week? Month? Year?

23 A. Um, about less than a week ago.

24 Q. Did you tell her anything else?

25 A. No.

26 Q. Just that?

27 A. That's it. I don't like to give her details.
28 I keep it as -- I don't even like to talk to her about

1 this because I don't want her to remember.

2 Q. Why did you tell her that what Mr. Chandler
3 did to her was bad? That seems like that would
4 re-enforce in her that something bad happened to her.

5 THE COURT: Is there a question pending?

6 MR. SCHUMB: Sure.

7 BY MR. SCHUMB:

8 Q. Is there a reason that what Mr. Chandler did
9 to her was bad?

10 A. Yes.

11 Q. What was that reason?

12 A. Because she going to sit here and talk to you
13 or to everyone here what had happened and she had no
14 idea why she was going to have to sit here. She knows
15 that something happened, but she doesn't know exactly
16 why as she's sitting here.

17 Q. Did you think that would help her testimony or
18 hurt it?

19 MS. FILO: Objection, argumentative.

20 THE COURT: Sustained.

21 BY MR. SCHUMB:

22 Q. Um, did you think it would make her be more
23 truthful?

24 MS. FILO: Objection, argumentative.

25 THE COURT: Counsel, as the trier of fact, I
26 don't find this line of inquiry helpful to me. It
27 doesn't appear to be relevant to any element of the
28 crime or any defense to the crime. The objection is

1 sustained. Please ask your next question.

2 MR. SCHUMB: Nothing further. Thank you.

3 THE COURT: All right. Um, redirect?

4 MS. FILO: Thank you.

5 REDIRECT EXAMINATION

6 BY MS. FILO:

7 Q. Um, Ms. Villarreal, when you initially
8 reported this incident to police, a patrol officer came
9 out; is that accurate?

10 A. Yes.

11 Q. In full San Jose Police Department uniform?

12 A. Yes.

13 Q. Did you speak to that patrol officer?

14 A. Yes.

15 Q. For approximately how long?

16 A. I don't remember. It was a while though.

17 Q. Did Ms. I. talk to the patrol officer?

18 A. Um, yes, to him and I'm not sure if it was a
19 captain or, um, she talked to him and there was another
20 person there.

21 Q. Was it another uniformed officer?

22 A. Yes.

23 Q. So two police officers --

24 A. Yeah.

25 Q. -- who came to respond to your call to the
26 police.

27 A. Yes.

28 Q. How long did Ms. I. speak to those officers?

1 A. I don't remember. Maybe for like 15, 20
2 minutes. I really don't remember.
3 Q. Okay. Is it fair to say that it was less than
4 an hour?
5 A. Yes. Yes.
6 Q. After you, um, spoke to the patrol officers, I
7 think your testimony is that about a day later you took
8 Ms. I. down to another place to meet with other police
9 officers; is that accurate? Did you take Ms. I. to the
10 Bank of America building on First Street?
11 A. Yes, I did.
12 Q. And is that the place that you were trying to
13 describe on cross examination?
14 A. Yes.
15 Q. That was about a day after the initial report?
16 A. Yes.
17 Q. And was that when Ms. I. was interviewed by
18 Detective Pierce, sitting to my right?
19 A. Yes.
20 Q. Did you also give a statement to Detective
21 Pierce on that same day at that same place?
22 A. Yes, I did.
23 Q. Subsequent to that, after that meeting at the
24 Bank of America, has Ms. I. met with police officers to
25 the best of your knowledge?
26 A. No.
27 Q. She has met with me; is that correct?
28 A. Yes.

1 Q. How many times has Ms. I. met with me?
2 A. Um, when she met you and, I believe, twice.
3 Q. The first time we met was where?
4 A. Um, at the Starbucks.
5 Q. Okay. And, um, what was the -- what was
6 discussed, um, when we met at Starbucks?
7 A. Um, when we met there, you -- I told her that,
8 um, you're a friend and, um, that you were a nice
9 person and that you were there to help us. And what we
10 discussed was about this date that was going to come.
11 Q. Um, and after that, you said we met again.
12 What was the second time we met?
13 A. Well, we went to the 70 building?
14 Q. 70 West Hedding?
15 A. Yes.
16 Q. That's my office?
17 A. Yes, your office.
18 Q. Okay. And where did we go after we met at
19 that building for a few minutes?
20 A. We came to the courthouse so she can feel
21 comfortable with the court room and she can have an
22 idea of how the whole process was going to be.
23 Q. You were present, um, for each of the meetings
24 that I had with Ms. I., correct?
25 A. Yes.
26 Q. Did I ever tell Ms. I. what she should say in
27 response to my questions?
28 A. No.

1 Q. Did I ever tell her exactly what questions I
2 was going to ask?
3 A. No.
4 Q. Did I let her know that, um, I would be asking
5 her some questions about Mr. Chandler?
6 A. Um, I remember you telling her that you and
7 another person were going to be asking her questions,
8 yes.
9 Q. But I did not tell her how to answer those
10 questions?
11 A. No.
12 Q. Ms. Villarreal, did, um, did Detective Pierce
13 meet with you on one additional occasion and show you,
14 or, show Ms. I. a chair that was taken from the
15 classroom?
16 A. Yes.
17 Q. Do you remember where and when that meeting
18 was?
19 A. Um, I think he asked her on that, on the day
20 that I was with her. Um, I don't remember.
21 Q. Okay. But you do remember another meeting
22 where Ms. I. was shown a chair?
23 A. Yes.
24 Q. Okay. Um, was it a photo of the chair or was
25 it the actual chair?
26 A. No, it wasn't like an actual chair. Um, he
27 asked her what kind of chair it was. And he showed her
28 what did the chair look like, yeah.

1 Q. By way of a photograph?

2 A. Yeah, yes.

3 MS. FILO: Okay, that's all the questions I
4 have. Thank you.

5 THE COURT: Recross?

6 MR. SCHUMB: Thank you, Your Honor.

7 RECROSS EXAMINATION

8 BY MR. SCHUMB:

9 Q. So tell me -- so the day of the disclosure
10 which is the 9th of January of 2012, um, your testimony
11 is that you were, you and Ms. I. were interviewed by a
12 uniformed police officer at the school, O.B. Whaeley?

13 A. No, at my house.

14 Q. They came to your house, okay. Because you
15 had gone home and called 911, right?

16 A. Yes.

17 Q. Got it. So a police officer came to your
18 house and then another police officer showed up later
19 or did they come at the same time? Or do you remember?

20 A. I don't remember who came. I think they came,
21 I think two officers came together. I really don't
22 remember how it happened. I know there was -- I know
23 there was officers at my house, but I don't remember
24 who came, if they came together or not.

25 Q. And Ms. I. had already been, um, did a
26 statement in front of Ms. Peery and Mr. Lara and the
27 school psychologist, right?

28 A. Can you repeat that again?

1 Q. Yeah. You'd already brought Ms. I. back to
2 school where she gave the statement to Ms. Peery and
3 Mr. Lara and the school psychologist. I think you
4 testified about that yesterday when the school
5 psychologist kind of went [gesture]?

6 A. Yes.

7 Q. That already happened?

8 A. Yes. That had already happened.

9 Q. So the first interview with Ms. I. was when
10 she interviewed her when she first disclosed to you on
11 the way to school that morning.

12 A. Yes.

13 Q. The second interview was when you brought her
14 back to school and she was interviewed by Ms. Peery,
15 Mr. Lara, and the psychologist?

16 A. Right.

17 Q. And the third interview was then done when the
18 police officer and another officer showed up at your
19 house in response to the 911 call, correct?

20 A. Yes.

21 Q. And then you took Ms. I. to downtown San Jose
22 where she was statementized again.

23 A. Yes.

24 Q. Okay. Four statements on the 9th of January
25 2012, correct?

26 A. Yes.

27 Q. Okay. And you were present for the first
28 three, but not for the interview with Detective

1 Pierce?

2 A. No, I was not there.

3 Q. For the interview with Detective Pierce, but

4 you were there for the other three, right?

5 A. Yes.

6 Q. And the one now that you're telling us about

7 with the officer -- were there two officers there or

8 just one?

9 A. At my house?

10 Q. Yeah.

11 A. There was two.

12 Q. Okay. And did Ms. I. tell them that she

13 didn't feel any liquid in her mouth at that time?

14 A. Um, she said it was kind of wet.

15 Q. Did she say that she did not feel any liquid

16 in her mouth?

17 A. Liquid? I don't remember her saying,

18 "liquid."

19 Q. Did she not say that or you don't recall?

20 A. No, she didn't say, "liquid."

21 Q. She didn't tell the police officers who

22 responded to your house on January 12th -- strike

23 that. So is it true then that Ms. I. did not tell the

24 two police officers who responded to your house that

25 she did not feel any liquid in her mouth.

26 A. I don't know what she said. I wasn't there.

27 When she was talking to the officers, it was in a

28 separate room, in her room. I was not there.

1 Q. Okay. Sorry, I thought you testified you were
2 there at that interview. So you were not present when
3 the two uniformed police officers responded to your
4 house and interviewed Ms. I.?

5 A. I was at home, but I was not there when they
6 were talking to her. They went to her room.

7 Q. Okay. Then it's fair to say that you did not
8 hear Ms. I. being interviewed by the two uniformed
9 police officers who responded to your house on January
10 12 -- strike that -- January 9th, 2012, correct?

11 A. Yes, I didn't hear the conversation.

12 Q. All right. Um, now, with respect to the, um,
13 conversation with Ms. Filo, you said you met with her
14 one time at Starbucks with Ms. I., right?

15 A. Yes.

16 Q. And at that time did Ms. Filo discuss the case
17 at all, any of the facts?

18 A. No.

19 Q. And then you met her another time at her
20 office and then later came to the courthouse?

21 A. Yes.

22 Q. Did you discuss with her the case or any facts
23 of the case at that time?

24 A. No.

25 Q. Have you ever personally discussed the facts
26 of the case with Ms. Filo?

27 A. No.

28 Q. Um, then this interview that you were talking

1 about, that happened at your sister's house?
2 A. Yes.
3 Q. Did that happen? Or maybe you're confused
4 now? That actually happened?
5 A. It wasn't a -- it was like a question.
6 Q. Okay, that's an interview. Is your sister's
7 house 5466 Lien Avenue? Is that where your sister's
8 house is?
9 A. Yes.
10 MR. SCHUMB: Thank you. No further questions.
11 THE WITNESS: I have no questions. Is this
12 witness excused or would either side like her on
13 standby?
14 MS. FILO: Excused by the People.
15 THE COURT: Mr. Schumb?
16 MR. SCHUMB: Excused.
17 Oh, Your Honor, can I just ask one more
18 question?
19 THE COURT: Sure, I'll let you re-open.
20 MR. SCHUMB: I'm sorry.
21 THE COURT: Go ahead.
22 BY MR. SCHUMB:
23 Q. Um, did you overhear the conversation between
24 Ms. I. and Detective Pierce when he interviewed her the
25 second time at your sister's house at 5466 Lien Avenue?
26 A. I was there. What do you mean?
27 Q. Did you hear the interview? Did you hear the
28 questions?

1 A. Yes, I did.
2 Q. The whole part?
3 A. I was there the whole time.
4 MR. SCHUMB: Okay, thank you.
5 THE COURT: All right. Is this witness
6 excused or would either side like her to remain on
7 phone standby?
8 MS. FILO: No, Your Honor. She's excused by
9 the People.
10 MR. SCHUMB: Thank you, Your Honor.
11 THE COURT: Is she excused?
12 MR. SCHUMB: Yes, she is, I'm sorry.
13 THE COURT: Thank you very much, ma'am.
14 MS. FILO: Your Honor, the People call, um,
15 Ms. L. And she is the victim, um, charged in count
16 three.
17 THE COURT: All right. Um, counsel, will you
18 come with me and I'll introduce myself to the child?
19 MR. SCHUMB: Yes.
20 (A recess is taken.)
21 MS. FILO: Your Honor, the People call Ms. L.
22 MS. L.:
23 COURT CLERK: Do you promise that everything
24 you tell us here today is going be the truth and
25 nothing but the truth?
26 THE WITNESS: Yes.
27 COURT CLERK: Thank you. Have a seat.
28 L.:
THE COURT: Ms. L., make yourself comfortable

1 in that chair. We've adjusted the microphone. And I
2 see you're with your mom, right?
3 SUPPORT PERSON: No.
4 THE COURT: Okay. Can the support person give
5 her name please.
6 SUPPORT PERSON: Elvia Enriquez, E-L-V-I-A,
7 E-N-R-I-Q-U-E-Z.
8 MR. SCHUMB: I didn't catch that.
9 THE COURT: Pronounce your name again.
10 SUPPORT PERSON: Elvia Enriquez.
11 THE COURT: Thank you for your help.
12 Ms. L., um, you know the rules. Tell the
13 truth and, um, speak nice and big into the microphone
14 because it's hard to hear. The attorneys will ask you
15 questions and I might have some questions. If you
16 don't understand the question, it's okay to say, I
17 don't understand that, ask it again, ask it a different
18 way. If the adults ask you a question and the adults
19 get it all wrong, you're allowed to correct the adults,
20 even though you're a kid and we're adults, in this
21 room, if we get it wrong, you can correct us. Do you
22 understand?
23 THE WITNESS: (Nods head.)
24 THE COURT: Thank you.
25 Please ask your next question.
26 MS. FILO: Thank you.
27 \\\
28 \\\

DIRECT EXAMINATION

BY MS. FILO:

Q. Good morning, Ms. L. Can you tell me how old you are right now?

A. 8.

Q. 8 years old. What is your birthday?

A. November 18.

Q. Do you know what year you were born?

A. 2004.

Q. All right. What grade are you in right now?

A. Third.

Q. Third grade. When you started the third grade, um, whose classroom were you assigned to?

A. Mr. Chandler.

Q. And what school is that?

A. O.B. Whaeley.

Q. How long have you been going to O.B. Whaeley? Did you go there for first grade?

A. Yes.

Q. What?

A. Yes.

Q. Did you go there for second grade?

A. Yes.

Q. And you are going there for third grade?

A. Yes.

Q. Um, Ms. L., do you know what month we're in right now? Do you know what month it is right now?

A. May.

1 Q. Good job. All right. So do you remember --
2 do you remember your Christmas break this year?
3 A. No.
4 Q. No? Do you remember like Christmas would have
5 been when? How many months ago?
6 Is that a hard question?
7 A. (Nods head.)
8 Q. Is Christmas in December?
9 A. Yes.
10 Q. Yes, okay, good job. So before Christmas
11 break, do you have a, um, do you have a break from
12 school for Christmas?
13 A. Yes.
14 Q. How long is your break? Do you get some days
15 off of school? That's cool, right?
16 You've got to answer out loud, remember?
17 A. Yes.
18 Q. Before you had your Christmas break, um,
19 Mr. Chandler was your teacher?
20 A. Yes.
21 Q. Was he your teacher after Christmas break?
22 Are you thinking really hard or do you not
23 know?
24 A. I don't know.
25 Q. Okay. Ms. L., you remember the rules, right?
26 If you don't know something, what do you say?
27 A. "I don't know."
28 Q. Just, Ms. Allison, I don't know the answer to

1 that, okay? Can you do that for me?

2 A. Yeah.

3 Q. Good job. All right. So, Ms. L., did you

4 ever, um, have to stay behind at recess in

5 Mr. Chandler's class?

6 A. Yes.

7 Q. Can you tell me what happened? Why did you

8 have to stay in for recess?

9 A. Because I got in trouble.

10 Q. You got in some trouble. What did you get in

11 trouble for?

12 A. I don't remember.

13 Q. Okay. What happened when you stayed in

14 Mr. Chandler's class at recess?

15 A. I had to wear something.

16 Q. You had to wear something?

17 A. On my eyes.

18 Q. What did you have to wear?

19 A. I don't know what it is, actually.

20 Q. Okay. Um, how did you, how did you know to

21 stay behind at recess? How did you know you were in

22 trouble?

23 A. Because he told me.

24 Q. What did he tell you?

25 A. I have to stay behind because I got in

26 trouble.

27 Q. Okay. Because you had to stay behind because

28 you got in trouble? Am I saying that right?

1 A. Yes.

2 Q. Okay. So when you stayed behind at recess,
3 what did, um, what did you do? Where did you go?
4 Strike all of that, sorry. Sometimes I just ask bad
5 questions. Did you go to the classroom?

6 A. Yes.

7 Q. And that was Mr. Chandler's classroom?

8 A. Yes.

9 Q. Where were you inside the classroom?

10 A. Um, desk.

11 Q. Desk? Whose desk?

12 A. I don't know.

13 Q. Okay. There are, there were all the students'
14 desks were in the classroom, right?

15 A. Yes.

16 Q. And did Mr. Chandler have a desk?

17 A. Yes.

18 Q. Do you see this big picture up here? It's
19 Defense Exhibit A. Do you see this big picture?

20 A. Yes.

21 Q. Good job, okay. And what's this desk that's
22 in the big picture?

23 A. What desk?

24 Q. There's a big desk right in the middle of the
25 picture with a blue chair. Whose desk is that?

26 A. Mr. Chandler's.

27 Q. Where were you when you stayed behind at
28 recess?

1 A. Um, at his students' desk.
2 Q. Were you sitting down or standing up?
3 A. Sitting down.
4 Q. Okay. What kind of chair were you sitting in?
5 A. A small one.
6 Q. So there's on the bottom left hand side of
7 this picture, there's a blue chair that's at a
8 student's desk. Do you see that chair?
9 A. Yes.
10 Q. Was it a chair like that?
11 A. Yes.
12 Q. And what happened after you sat down in the
13 chair?
14 A. I had to take off my shoes and leave my socks.
15 Q. You had to take off your shoes and your socks?
16 A. No.
17 Q. What?
18 A. I had to leave my socks, but I had to take off
19 my shoes.
20 Q. You had to leave on your socks?
21 A. Yes.
22 Q. Okay. Why did you have to do that?
23 A. Because I had to feel things without looking
24 at them.
25 Q. Do you know what you felt?
26 A. No.
27 Q. Can you -- um, hold on. Let me ask you
28 another question. So you said you had something on

1 your eyes; is that right?

2 A. Yes.

3 Q. Okay. Can you describe what was on your eyes

4 for me?

5 A. Um, it's a blindfold.

6 Q. A blindfold, okay. What color was the

7 blindfold?

8 A. Blue.

9 Q. Blue. Do you know where the blindfold came

10 from?

11 A. No.

12 Q. So you didn't see it come from a drawer or a

13 cabinet or pocket, his pocket or anything like that?

14 You don't know where it came from?

15 A. No.

16 Q. You said it was blue. How did it stay on your

17 head? Did it tie or did it have elastic like swimming

18 goggles? Or did it have -- how did it stay on your

19 head?

20 A. Like swimming goggles.

21 Q. It had like elastic kind of? Do you know what

22 elastic is?

23 A. Yes.

24 Q. So it was like that, okay. So you put on the

25 blindfold. And then what happened?

26 A. I had to take off my shoes.

27 Q. Did you take off your shoes or did

28 Mr. Chandler take off your shoes?

1 A. I did.
2 Q. And then what happened after you took off your
3 shoes?
4 A. Um, I had to sit down.
5 Q. And then what happened?
6 A. He started getting some things and I had to
7 feel them.
8 Q. How do you know that he was getting things?
9 A. Because I heard.
10 Q. Okay. What did you hear?
11 A. Um, opening the cabinets.
12 Q. Did you hear anything else?
13 A. No.
14 Q. Did Mr. Chandler say anything to you while he
15 was getting the things?
16 A. I don't remember.
17 Q. Okay. And then what happened after, after you
18 stopped hearing the cabinets opening? What happened
19 after that?
20 A. He started rubbing those things on my feet.
21 Q. Did you know what any of the things were?
22 A. No.
23 Q. No? Did he tell you why he was doing this?
24 A. No.
25 Q. Were you supposed to do anything when he was
26 rubbing the items on your feet?
27 A. Yeah, I had to guess.
28 Q. Did you have any guesses?

1 A. Yes.

2 Q. What did you guess?

3 A. Um, I don't remember what I guessed.

4 Q. Okay. You don't remember what you guessed,
5 but you did make some guesses?

6 A. Yes.

7 Q. Did you get anything right?

8 A. No.

9 Q. No? Um, can you describe anything for me that
10 he rubbed on your feet?

11 A. No.

12 Q. No? Was it more than one thing?

13 A. Yes.

14 Q. Do you know what any one of those things felt
15 like? Can you describe any one of those things for me?

16 A. One felt smooth.

17 Q. One felt smooth? Okay.

18 A. The other one was kind of bumpy.

19 Q. Say it one more time.

20 A. Another one was kind of like bumpy.

21 Q. Another one was kind of bumpy? Anything else?

22 A. No.

23 Q. Can you remember anything else about the
24 things?

25 A. No.

26 Q. Okay. How many times did you stay in the room
27 with Mr. Chandler and put the blindfold on?

28 A. Once.

1 Q. Um, do you remember whether this happened
2 before Christmas break or after Christmas break?
3 A. No.
4 Q. No? You don't remember?
5 A. (Shakes head.)
6 Q. Okay. Ms. L., do you remember, um, talking to
7 a police officer in this case?
8 A. Yes.
9 Q. And was it a man police officer or a lady
10 police officer?
11 A. Lady.
12 Q. A lady, okay. Do you remember her asking you
13 questions kind of like this?
14 A. Yes.
15 Q. Do you remember telling her that it felt kind
16 like of a glue stick?
17 A. Yeah.
18 Q. Yeah? Is that a good description of what the
19 thing felt like that Mr. Chandler put on your foot, on
20 your feet?
21 A. Yeah.
22 Q. Yeah, okay. Did you ever -- did you ever
23 peak? Did you ever see through the blindfold?
24 A. No.
25 Q. No? What happened when you were all done, um,
26 when he was done putting the things on your feet?
27 A. To go back to the classroom and play with the
28 other kids.

1 Q. So you just stayed in the classroom?
2 A. Yes.
3 Q. Did you take the blindfold off?
4 A. Yeah.
5 Q. And did Mr. Chandler say anything to you when
6 you were all done?
7 A. He said I have to wait.
8 Q. Did he tell you anything about whether you
9 should tell other people about putting the blindfold
10 on?
11 A. No.
12 Q. No? Did you see anything after you took the
13 blindfold off?
14 A. No.
15 Q. Just the room?
16 A. Yes.
17 Q. Did you see anything that you thought was, um,
18 anything weird in the room?
19 A. No.
20 Q. Okay. Did you see any of the things that you
21 thought Mr. Chandler rubbed on your feet?
22 A. Yes.
23 Q. What did you see?
24 A. Glue stick.
25 Q. A what?
26 A. Glue stick.
27 Q. Where did you see the glue stick?
28 A. On the desk.

1 Q. Whose desk?
2 A. Student's.
3 Q. Do you know which student it was?
4 A. No.
5 Q. Did Mr. Chandler ever tell you what he had
6 used on your feet?
7 A. Yes.
8 Q. What did he tell you?
9 A. I don't really remember.
10 Q. Okay. You don't remember what he said, but
11 you do remember that he told you?
12 A. Yes.
13 Q. Um, how did, how did you feel when you had the
14 blindfold on? Was it fun? Was it sad? Was it, what
15 did you feel like when you had the blindfold on?
16 A. I don't remember.
17 Q. Okay. Did you ever tell anybody about putting
18 the blindfold on?
19 A. My friend.
20 Q. What friend?
21 A. Veronica.
22 Q. Is that the only person that you told?
23 A. Yes.
24 Q. Okay. And you told the police officers,
25 right?
26 A. Yes.
27 Q. Okay. Um, did you tell your mom?
28 A. I don't remember.

1 Q. Don't remember, okay. And that was the only
2 time that you put the blindfold on in Mr. Chandler's
3 classroom?
4 A. Yes.
5 Q. Do you ever remember seeing other children put
6 the blindfold on?
7 A. No.
8 Q. No? Okay. Ms. L., around the time that you
9 put the blindfold on at recess, were you, um, were you
10 reading anything in class?
11 A. No.
12 Q. No? Were you -- do you know who Helen Keller
13 is?
14 A. No.
15 Q. No? You weren't reading the Helen Keller
16 book?
17 A. No.
18 Q. Okay, Ms. L., I think that's all the questions
19 I have for you. Thank you very much.
20 THE COURT: And now it's Mr. Chris' turn to
21 ask you questions.
22 MR. SCHUMB: Judge, maybe it's time to take
23 our morning recess?
24 THE COURT: I asked the court reporter and
25 she's okay so far.
26 CROSS EXAMINATION
27 BY MR. SCHUMB:
28 Q. Sorry to make you wait. I'm trying to figure

1 out what I'm doing here. How you doing?
2 A. Great.
3 Q. Your voice sounds very strong and loud.
4 You're a good public speaker. Have you ever been in
5 plays or anything like that at school?
6 A. Yes.
7 Q. Cool. Cool. Hey, um, so I just wanted to ask
8 you a couple quick questions, Okay? Um, when, um, the
9 game got played, did you see the game played in the
10 classroom with all the other kids, the guessing game?
11 A. Yes.
12 Q. Okay. And how did it start out? Do you
13 remember?
14 A. Um, he had, um, some volunteers to show
15 examples.
16 Q. He had two. Did he do two at a time?
17 A. Yeah.
18 Q. Okay. And what would they try? Did they get
19 to try candy and stuff like that?
20 A. Yes.
21 Q. Okay. Do you remember how it worked? Did
22 they do like the feeling game first and then -- what
23 happened if they guessed right?
24 A. I don't remember.
25 Q. It was a long time ago and you're doing a
26 really good job remembering and you're doing an even
27 better job telling me when you don't remember, okay,
28 because that's really helpful. Um, so when the -- um,

1 did you ever -- um, you saw kids when Mr. Chandler
2 would put food in their mouths?
3 A. Yes.
4 Q. Okay. And he would hold out his fingers and
5 put it their mouth?
6 A. Yes.
7 Q. Would he move it around and tell them to taste
8 it?
9 A. What?
10 Q. Would he move the candy around and say, taste
11 it when he moved the candy around?
12 A. No. He would just tell them to taste it.
13 Q. Okay, just tell them to taste it, okay. And
14 what kind of candies did they get to do? Do you
15 remember specific kinds of candies?
16 A. Sweet Tarts.
17 Q. Yeah. Chocolate? Did he ever do chocolate?
18 A. Yes.
19 Q. And then, um, I think when you did it in the
20 room with him alone, who brought you to the room?
21 A. Amanda.
22 Q. Who's she?
23 A. The yard duty.
24 Q. The yard duty supervisor?
25 A. Yes.
26 Q. And so she brought you to Mr. Chandler's
27 room. So when you sat, you were sitting in your chair,
28 your little chair, right?

1 A. Yes.

2 Q. Okay. And you had your feet up on the desk
3 and you had your socks on?

4 A. Yes.

5 Q. Okay. And, um, I think -- do you remember
6 telling the officer that you talked to that he, um,
7 touched your foot with a pen?

8 A. Yes.

9 Q. And I think you guessed that right. Was that
10 one of the ones you guessed right?

11 A. Yeah.

12 Q. And I think you said the pen on the desk with
13 the glue stick afterwards. Do you remember that?

14 A. Yes.

15 MR. SCHUMB: Okay, cool. Um, I think that's
16 all. Thank you for coming.

17 THE COURT: Is there any redirect?

18 MS. FILO: No, Your Honor, thank you.

19 THE COURT: All right, um, Ms. L., I've
20 listened to what you've said. And I understood it all
21 and I don't have any questions.

22 Is this witness excused or would either side
23 like her to remain on phone standby?

24 MS. FILO: Excused, Your Honor.

25 MR. SCHUMB: Excused, Your Honor.

26 THE COURT: I'll tell you what I tell
27 everybody. You're not allowed to discuss your
28 testimony with anyone. You can talk about coming to

1 court, but you can't talk about what you said on the
2 stand. And you're free to go. Thank you very much for
3 coming in.

4 MS. FILO: Your Honor, I may need just a
5 minute or two to figure out in the building where my
6 next witness is.

7 THE COURT: Sure. Court is in brief recess.

8 (A recess is taken.)

9 THE COURT: All right, thank you.

10 Ms. W., would you come forward please. Thank
11 you.

12 W.:

13 COURT CLERK: Raise your right hand please.

14 Do you promise that everything you tell us
15 here today will be the truth and nothing but the truth.

16 THE WITNESS: Yes.

17 COURT CLERK: Thank you.

18 THE COURT: Ms. W., please have a seat in that
19 chair. Make yourself as comfortable as you can.

20 Everybody uses microphones here because it's a really
21 big courtroom and if we don't use microphones nobody
22 can hear anybody. And that's a problem for me in
23 particular because I'm old. My hearing's going along
24 with everything else. So the attorneys will ask you
25 questions, and I might have some questions.

26 Would the support person please state your
27 name for the record.

28 SUPPORT PERSON: Ann Burde.

1 THE COURT: Thank you, Ms. Burde.

2 All right, thank you, Ms. W.

3 Please proceed, Ms. Filo.

4 MS. FILO: Thank you.

5 DIRECT EXAMINATION

6 BY MS. FILO:

7 Q. Ms. W., can you tell me how old you are right
8 now?

9 A. 10.

10 Q. 10. When is your birthday?

11 A. February 2, 2002.

12 Q. And what grade are you in right now?

13 A. Fourth.

14 Q. Fourth grade. Where do you go to school?

15 A. O.B. Waeley.

16 THE COURT: I'm sorry, I didn't hear that.

17 THE WITNESS: O.B. Waeley.

18 BY MS. FILO:

19 Q. Where did you go to third grade?

20 A. Mr. Chandler's.

21 Q. So you were in the third grade in

22 Mr. Chandler's classroom?

23 A. Yes.

24 Q. And where was that? Was that also at O.B.

25 Waeley?

26 A. Yes.

27 Q. When you were in Mr. Chandler's classroom, um,
28 did you ever stay behind at recess?

1 A. Yes.
2 Q. Why?
3 A. He would play this game with us.
4 Q. Okay. You said he would play a game "with
5 us." Who's "us"?
6 A. Me, Melissa, and sometimes there's other
7 people that play that are my friends and they go at a
8 different time.
9 Q. They would go at a different time?
10 A. Different day.
11 Q. So you said that you would stay behind during
12 recess and play a game. What was the game about?
13 A. He would, he would either put something
14 between our feet and rub it together or put something
15 in our mouth.
16 Q. Okay. Okay. So do you remember the very
17 first time you played the game?
18 A. Yeah.
19 Q. Can you tell me about the very first time?
20 A. Um, Melissa said that she goes in there so she
21 could help him clean or do something.
22 Q. And so did you go with Melissa?
23 A. Yeah.
24 Q. "Yes"?
25 A. Yes.
26 Q. Let me move this just a little bit closer.
27 How's that? Is that better?
28 A. Yes.

1 Q. Okay. So you went with Melissa. Was it just
2 the two of you?
3 A. Yeah.
4 Q. And was Mr. Chandler in the classroom?
5 A. Yes.
6 Q. What did you do when you got into the
7 classroom with Melissa?
8 A. Uh, he got bags, like hot potato bags.
9 Q. Hot potato bags. So are those bags -- when I
10 think of hot potato, I think almost like when you put
11 your legs together in one bag and then two people try
12 to walk together?
13 A. Yeah.
14 Q. Is it like that?
15 A. Yeah.
16 Q. So almost like a pillow case?
17 A. Yeah.
18 Q. Kind of like that?
19 A. Yeah.
20 Q. Okay. And you said he got bags. And when you
21 say, "he," are you talking about Mr. Chandler?
22 A. Yes.
23 Q. What did Mr. Chandler do with the hot potato
24 bags?
25 A. He put it over our heads.
26 Q. And then what happened?
27 A. Then we laid on the floor next to the
28 bookcase. Wait. At first, we take off our socks and

1 shoes and then we did that.

2 Q. Okay. And you said you would lay down next to
3 a bookcase. So, um, Ms. W., I'm going to show you a
4 big picture that has been marked as Defense Exhibit A.
5 Do you recognize what's in this picture?

6 A. Um, yeah.

7 Q. A little bit?

8 A. Yeah.

9 Q. What does that look like?

10 A. Mr. Chandler's desk.

11 Q. Okay. Where did you and Melissa lay down when
12 you had the hot potato sacks on?

13 A. Somewhere near the cabinet along there.

14 Q. Okay. I'll tell you what. I'm going to find
15 a, um, Post-it and I'm going to put a big "W." on it
16 for Ms. W., okay?

17 A. Okay.

18 Q. And I think you were pointing to this cabinet
19 that has a big sign on it that says, "group prizes."
20 Is that the cabinet you're pointing to?

21 A. The one next to it.

22 Q. The shorter one?

23 A. Yeah. Somewhere next to that.

24 Q. There's already a Post-it that says "1" and
25 "2." Was it right around there?

26 A. Yeah.

27 Q. Where you were laying down?

28 A. Well, somewhere out of the picture.

1 Q. So more kind of over here where the picture
2 stops?

3 A. Yeah.

4 Q. Is that right?

5 A. Yes.

6 THE COURT: Indicating the lower right hand
7 corner.

8 BY MS. FILO:

9 Q. I've put a Post-it at that very end of the
10 picture. So almost where the picture stops; is that
11 right?

12 A. Yeah.

13 Q. So you said that you would lay down and that,
14 um, you took off your shoes and your socks. Is that
15 right?

16 A. Yes.

17 Q. What did -- um, what happened after you took
18 off your shoes and socks?

19 A. Mr. Chandler would put something between our
20 feet and rub them together.

21 Q. So, okay. If I put my pen in between my two
22 hands and roll my pen up and down, was that kind of
23 what was happening with your feet?

24 A. Yes.

25 Q. Did you ever know what was in between your
26 feet?

27 A. He showed us a small part of it. He hid it
28 behind that door on the cabinet that has the poster

1 that says group projects.
2 Q. There was something in this big cabinet that
3 says, "group prizes"?
4 A. Yes.
5 Q. What was it?
6 A. He showed me a purple piece and Melissa a red
7 piece.
8 Q. Piece of what?
9 A. Looks like cloth.
10 Q. Looks like cloth?
11 A. Yeah.
12 Q. Oh, okay. Um, and he told you that that's
13 what he put between your feet?
14 A. He just showed us a tiny part of it.
15 Q. But did he tell you that that's what was on
16 your feet?
17 A. Yes.
18 Q. Um, what did it feel like to you?
19 A. Um, it kind of felt like skin.
20 Q. Like skin? Okay. How did you feel when you
21 were playing this game with Mr. Chandler?
22 A. I felt we were there to help him clean and
23 stuff. And so I didn't know what was going on.
24 Q. So you were a little bit confused?
25 A. Yes.
26 Q. Did you have any other way that you felt when
27 he was actually putting this stuff between your feet?
28 A. No.

1 Q. No? Do you remember talking to, um, some
2 police officers about Mr. Chandler's class?
3 A. Yes.
4 Q. Do you remember telling the police officers
5 that you were, that you were grossed out?
6 "Yes"?
7 A. Yes.
8 Q. What did you mean by that?
9 A. Well, I didn't know what was between my feet.
10 And it was kind of weird to be barefooted inside the
11 class.
12 Q. So how many times did you play the game where
13 you lay down and Mr. Chandler put something on your
14 feet?
15 A. I don't really remember, but I know it's more
16 than ten.
17 Q. Was it always the same thing? Did it always
18 feel like the same thing between your feet or did it
19 feel like different things?
20 A. It was always the same.
21 Q. Were you supposed to do anything while, um,
22 Mr. Chandler was rubbing this thing on your feet?
23 A. We weren't supposed to look.
24 Q. Anything else?
25 A. Um, no.
26 Q. Were you supposed to guess what the thing was?
27 A. No.
28 Q. You said it was more than ten times that you

1 played this game where you were laying on the floor; is
2 that right?

3 A. Yes.

4 Q. You said the first time you were with
5 Melissa.

6 A. Yes.

7 Q. Were you always with someone else or were you
8 ever by yourself when you were laying on your stomach?

9 A. Um, I think the first or second day I played
10 the game when we were in the library. He took me to
11 the class alone and he played the part where he put
12 something in my mouth.

13 Q. Okay. So the first or second -- say that one
14 more time.

15 A. The first or second, um, time I played, uh,
16 when we were at the library, he took me alone into the
17 class and put something in my mouth.

18 Q. Okay. Tell me about what happened when you
19 walked into the classroom alone with Mr. Chandler.

20 A. It was dark.

21 Q. Okay. And where did you go?

22 A. Near the bookcase again.

23 Q. Okay. Kind of still in this area around, um,
24 kind of the side or the front of Mr. Chandler's desk?

25 A. Where the "W." is.

26 Q. Where the "W." is, okay, so the real bottom
27 right hand corner of the photograph of Exhibit A.

28 A. Yes.

1 Q. Okay. And you said he put something in your
2 mouth. Were you standing up or sitting down?
3 A. Sitting down.
4 Q. Where were you sitting?
5 A. Near the bookcase.
6 Q. What kind of chair were you sitting in?
7 A. Like one of those in the classes.
8 Q. So some of these, um, chairs are, um, like
9 hard plastic, like this, and they have just regular
10 legs, and then there's a chair over here by
11 Mr. Chandler's desk that has wheels on it, sort of like
12 the court reporter's right there. Do you see that?
13 A. Yes.
14 Q. Was it a chair that had wheels or no wheels?
15 A. No wheels.
16 Q. Okay. And you said that he put something in
17 your mouth?
18 A. Yes.
19 Q. Could you see what he was putting in your
20 mouth?
21 A. No because he put blindfolds on us.
22 Q. And you said "us." Was it us or was it just
23 you by yourself?
24 A. Um, me and Melissa.
25 Q. So I thought you said Mr. Chandler came into
26 the library and got you by yourself.
27 A. Yes.
28 Q. Was Melissa with you?

1 A. No, she was picking out books.
2 Q. She was picking out books?
3 A. Yes.
4 Q. At the library?
5 A. Yes.
6 Q. So when Mr. Chandler put the blindfold on you,
7 were you by yourself or were you with Melissa?
8 A. When he took me from the library, that he did
9 blindfold me and also the times that I was with
10 Melissa.
11 Q. So he used the blindfold on you by yourself
12 and when you were with Melissa?
13 A. Yes.
14 Q. I want to talk about just the time that he
15 came to get you from the library. Let's focus on that
16 right now.
17 A. Okay.
18 Q. So he came to get you from the library and
19 brought you down to the classroom.
20 A. Yes.
21 Q. And he put the blindfold on you.
22 A. Yes.
23 Q. Can you tell me anything about the blindfold?
24 A. Um, it's like the blindfolds that mostly girls
25 wear when they go to sleep so, when they wake up in the
26 morning, the sun doesn't shine on their eyes.
27 Q. That's a very good description. Like a sleep
28 mask?

1 A. No.

2 Q. Do you know what color it was?

3 A. Black.

4 Q. So you said that he put some things in your

5 mouth. Was that while you had the blindfold on?

6 A. Yes.

7 Q. Do you know what he put in your mouth?

8 A. No.

9 Q. Did you -- what did it feel like?

10 A. Skin.

11 Q. Did it have a shape?

12 A. It was round.

13 Q. Did it have any taste?

14 A. Um, when he first played it, he asked what

15 flavor we wanted so we said strawberry. And when I

16 first tasted it, it had like a fainty strawberry taste.

17 Q. Was the round thing -- how big was it?

18 A. Um, it covered most of my mouth, but not the

19 whole thing.

20 Q. So it was bigger than like my pen?

21 A. Yeah.

22 Q. And how far did this round thing go in your

23 mouth?

24 A. Uh, like to my, like in the middle of my

25 tongue.

26 Q. Did Mr. Chandler say anything to you when this

27 thing was in your mouth?

28 A. He said it was candy.

1 Q. He said it was candy?
2 A. Yeah.
3 Q. Did it taste like candy?
4 A. No, because when I first bit it, he said don't
5 bite it.
6 Q. So you bit down and he said don't bite?
7 A. Yes.
8 Q. Did he say anything else?
9 A. No.
10 Q. Could you hear anything else?
11 A. Sometimes I would hear the sink water wash
12 something.
13 Q. Could you -- um, so could you put -- could you
14 close your mouth around the thing?
15 A. No.
16 Q. Okay. How come?
17 A. Because part of it was blocking my lips.
18 Q. So the thing wasn't all the way in your mouth.
19 A. Yeah.
20 Q. So part of it was sticking out so you couldn't
21 close your mouth around it?
22 A. Yeah.
23 Q. Okay. Um, do you know where Mr. Chandler was
24 when this thing was in your mouth?
25 A. In front of us.
26 Q. How did you know that he was in front of you?
27 A. Because, uh, I hear his footsteps.
28 Q. Was he moving?

1 A. Yeah, sometimes.

2 Q. Could you tell where Mr. Chandler's hands
3 were?

4 A. Um, no.

5 Q. No? What did he do with the thing that he was
6 putting in your mouth?

7 A. He pushed into my mouth a little or he would
8 take my head and move it closer to it.

9 Q. You just did something with your hand. Can
10 you show me what you did with your hand?

11 So pushing like this [gesturing].

12 A. Lightly, not hard.

13 THE COURT: The witness was making a forward
14 pushing motion with her right hand.

15 BY MS. FILO:

16 Q. And where was that hand? What was he pushing
17 on?

18 A. The candy.

19 Q. He was pushing the candy into your mouth? I'm
20 not understanding.

21 A. Like he held on it and then he like, uh, he,
22 um, moved it inside my mouth.

23 Q. Okay. So, um, I'm going to give you my pen,
24 okay? How about that?

25 A. Okay.

26 Q. And can you tell me what it felt like was
27 happening?

28 A. Um, he was doing it like this.

1 Q. So he was pushing the pen into and out of what
2 would be your mouth?
3 A. Yes.
4 Q. Okay. Could you ever feel, um, his hand on
5 the end of whatever it was?
6 A. No.
7 Q. Okay. Do you know where his other hand was?
8 A. No.
9 Q. Was his hand ever on the back of your head?
10 A. Yes.
11 Q. Okay. When did that happen?
12 A. Somewhere in the middle.
13 Q. What happened with the hand that was on the
14 back of your head? Did it move ever?
15 A. Yes.
16 Q. How did that move?
17 A. Sometimes he would move it in or he would take
18 my head and move it.
19 Q. Take your head and move it towards the object?
20 A. Yeah.
21 Q. And you just put your, kind of your five
22 fingers on the back of your head and pushed your head
23 forward and back?
24 A. No, he did.
25 Q. Oh, he did that?
26 A. Yes.
27 Q. Kind of like you're nodding almost?
28 A. Yeah.

1 Q. Okay. Could you tell how long the thing was
2 that was in your mouth?

3 A. Um, sometimes he would go and do it to me and
4 then do it to Melissa once or maybe twice.

5 Q. Okay. Okay. So you told us about the time
6 that he came and got you from the library and that you
7 were in the classroom all by yourself with
8 Mr. Chandler; is that right?

9 A. Yes.

10 Q. How many times did you play -- let me ask you
11 this: Did that happen -- where he brought you into the
12 classroom, put a blindfold on you, and put things in
13 your mouth, did that happen more than once?

14 A. No. He walked with me with Melissa.

15 Q. Okay. Do you remember -- and it's okay if you
16 don't; I just need to know. Do you remember how many
17 times this happened when you were all by yourself?

18 A. Um, only once.

19 Q. And that's the time at the library?

20 A. Yes.

21 Q. Or from the library. And then do you remember
22 how many times it happened when you were with Melissa?

23 A. Um, I know it's more than once.

24 Q. Can you give me -- do you know what an
25 estimate is?

26 A. Yes.

27 Q. Can you give me an estimate of how many times
28 you think you went with Mr. Chandler and Melissa in

1 Mr. Chandler's classroom?
2 A. Ten.
3 Q. When you went with Melissa, you said that
4 there were sometimes where Mr. Chandler had you lay
5 down on the floor.
6 A. Yes.
7 Q. Do you remember saying that?
8 A. Yes.
9 Q. Any of the times that you laid on the floor,
10 did you also sit up in the chair or were those always
11 separate times?
12 A. Separate.
13 Q. Okay. So it was either with your feet or
14 sitting in the chair.
15 A. Yes.
16 Q. But not the things -- but you didn't do one
17 and then the other.
18 A. Yes.
19 Q. That's correct?
20 A. Yes.
21 Q. You said that the thing that was in between
22 your feet always felt like the same thing, correct?
23 A. Yes.
24 Q. What about the thing in your mouth, was the
25 thing in your mouth always the same or was it
26 different?
27 A. Always the same.
28 Q. Did it always taste a little bit like

1 strawberry or did it have other tastes?
2 A. I remember strawberry.
3 Q. Did anything ever come out of the thing that
4 was in your mouth?
5 A. No.
6 Q. Was the thing, um, dry or wet? Or do you
7 remember?
8 A. When he touched my mouth, it was wet.
9 Q. Did -- um, on the times that he put something
10 in your mouth, did he ever put anything in your mouth,
11 other than this round thing you've described? Did he
12 ever use candy or crackers or anything like that?
13 MR. SCHUMB: Objection, Your Honor, leading.
14 She's already called it candy.
15 THE COURT: Overruled.
16 Did you understand the question?
17 THE WITNESS: No.
18 THE COURT: Okay. You can answer it.
19 MS. FILO: She said she didn't understand.
20 Let me ask it another way.
21 BY MS. FILO:
22 Q. You said -- you told us about these times
23 where Mr. Chandler put this round thing in your mouth,
24 right?
25 A. Yes.
26 Q. Did he ever put anything else in your mouth
27 before or after he was done with the round thing?
28 A. Um, sometimes afterwards he would, um, give us

1 lollipops or powder candy in our mouths and we guess
2 what flavor it is.
3 Q. Okay. Was that always after the round thing?
4 A. Yes.
5 Q. So the round thing always came first.
6 A. Yes.
7 Q. Did he ever tell you what he was putting in
8 your mouth?
9 A. He said it was candy.
10 Q. But it didn't taste like any candy you had
11 ever had before?
12 MR. SCHUMB: Objection, misstates the
13 testimony.
14 THE COURT: Yes. Please rephrase.
15 MS. FILO: Sure.
16 BY MS. FILO:
17 Q. Did it taste like any kind candy you had ever
18 had before?
19 A. No.
20 Q. Did you ever hear any noises while the round
21 thing was in your mouth?
22 A. I heard shoe squeaks.
23 Q. Shoe squeaks, okay. Anything else?
24 A. Um, I hear, um, taking something and then
25 putting it on his desk.
26 Q. Okay. Do you know what kind of sound that
27 was?
28 A. Uh, it sounded like metal hitting wood.

1 Q. I think that you told us that, when you were
2 laying down and, um, he was putting something on your
3 feet, that you felt confused. Is that right?

4 A. Yes.

5 Q. When you were sitting in the chair and he was
6 putting things in your mouth, how did you feel about
7 that?

8 A. Um, I was kind of uncomfortable.

9 Q. Tell me what made you uncomfortable.

10 A. Well, first of all, he said it was candy and
11 it didn't taste like candy. And when I bit it and he
12 said don't bite, how did he know that I was biting it?

13 Q. That's a good question. Okay. So did you
14 ever, um, talk to anybody about this time that you
15 were, um, in the classroom with Mr. Chandler?

16 A. No, but I sometimes afterwards, when me and
17 Melissa were walking back from recess, she would say,
18 uh, I saw Mr. Chandler's belt on his desk.

19 Q. She did?

20 A. Yes.

21 Q. And while, um, while this was happening, um,
22 can you give me any other way that you felt, other than
23 uncomfortable or is that the best word?

24 A. Best word.

25 Q. Okay. Did you ever talk to Melissa about what
26 Mr. Chandler was putting in your mouth?

27 A. No.

28 Q. No? Did Melissa talk to you about anything

1 Mr. Chandler put into her mouth?
2 A. I don't remember.
3 Q. Did you ever talk to any grownups about what
4 was happening at recess?
5 A. No.
6 Q. No? Who was the first grown up that you
7 talked to about this, about the thing you were doing
8 with Mr. Chandler?
9 A. No one.
10 Q. Well, you talked to the police at some point,
11 right?
12 A. Oh, yeah.
13 Q. Was that the first grownup that you talked to?
14 A. Yes.
15 Q. Okay. And I want to make sure that I have
16 this right, um, Ms. W., you were in Mr. Chandler's
17 class, not this year, but last year, right?
18 A. Me?
19 Q. Yes.
20 A. Oh, yes.
21 Q. Okay. And, other than Melissa, was anybody
22 ever in the room with you and Mr. Chandler?
23 A. Um, no.
24 Q. Okay, just got your name wrong. Sorry, Ms. W.
25 Okay, I'm going to take a minute and look at my notes
26 and see if I have any other questions, okay?
27 A. Okay.
28 Q. Thank you. Ms. W., when you said at first

1 that the thing tasted a little bit like strawberry --

2 A. Yes.

3 Q. -- did it always taste like strawberry or just
4 at the beginning?

5 A. At the beginning.

6 Q. And after a while did it taste like strawberry
7 anymore?

8 A. Um, he would ask us if we wanted other
9 flavors, but we said no.

10 Q. But while it was in your mouth, did the
11 strawberry flavor stay or did it wear off?

12 A. It stayed.

13 MS. FILO: Okay. All right, that's all I
14 have. Thank you very much.

15 THE WITNESS: You're welcome.

16 THE COURT: All right. Um, now, um, Mr. Chris
17 will ask you questions.

18 THE WITNESS: Okay.

19 CROSS EXAMINATION

20 BY MR. SCHUMB:

21 Q. So how you doing?

22 A. Good.

23 Q. Okay. You sound like you're doing good.

24 Um, is it okay to maybe sit right here?

25 THE COURT: Anywhere you want.

26 BY MR. SCHUMB:

27 Q. Hey, now, did you ever see other kids play the
28 game?

1 A. Um, I would see them walking to the class.
2 Q. You never played the game with the whole class
3 in the classroom?
4 A. No.
5 Q. Okay. Do you remember, um, when you talked to
6 the officer you said you thought you remembered about
7 Helen Keller? Remember the lady who, the woman who
8 couldn't see and she couldn't hear? Remember learning
9 about that last year?
10 A. No.
11 Q. Okay. All right. Um, you said you saw people
12 walking over to go into the class to do the game?
13 A. Yes.
14 Q. Who did you see walk over there?
15 A. Um, they were two of my classmates, um, really
16 close friends. Um, one was a boy and one was a girl.
17 Q. Who was the boy?
18 A. Kevin.
19 Q. Who was the girl?
20 A. Carla.
21 Q. How many times did Kevin play the game with
22 Mr. Chandler, did he tell you?
23 A. Um, no, but he said it tasted like candy and
24 he kept on getting lollipops and powder candy and
25 stuff.
26 Q. You got that too, didn't you?
27 A. Yeah.
28 Q. What about Carla? Did you talk to her about

1 it?

2 A. Well, sometimes me and Melissa and Arlet and

3 other people that also played the game, um, we would

4 wonder what it was.

5 Q. Okay. Um, and what did Arlet say about it?

6 A. Um, she didn't say anything.

7 Q. She, right?

8 A. Yeah.

9 Q. What did Arlet tell you she thought it was?

10 A. She thought it was candy too.

11 Q. You thought it was candy, didn't you?

12 A. Yeah.

13 Q. It tasted like candy, but just not candy you

14 had ever had. It was some kind of strawberry candy?

15 A. Yes.

16 Q. Now, um, you said that he showed you the

17 object that he was putting between your feet?

18 A. Yes.

19 Q. And you said he showed you a purple one and

20 showed Melissa a red one.

21 A. Yes.

22 Q. It was some like cloth-covered object?

23 A. Yes.

24 Q. Was it -- do you remember how big it was?

25 A. Um, it was pretty small.

26 Q. Okay. Did you touch it?

27 A. No.

28 Q. Did you have any reason to think that wasn't

1 what he was putting on your feet?
2 A. Yes.
3 Q. What was that? Why was that?
4 A. Because he was a pretty nice teacher and
5 that's it.
6 Q. Okay. You believed him when he told you that
7 that's what he put on your feet?
8 A. Yes.
9 Q. And I think pointed -- he was putting it on
10 the tops of your feet, kind of?
11 A. No. Like on the bottom.
12 Q. Oh, on the bottom, okay. Um, do you remember
13 saying that at one point you knew he was close because
14 his knees were touching your knees?
15 A. Yes.
16 Q. Okay. So you kind of felt his boney knees
17 kind of touching the boney part of your knees?
18 A. Yes.
19 Q. Was that while he was putting this strawberry
20 object in and out of your mouth?
21 A. Yes.
22 Q. Um, you said something about his belt I didn't
23 quite hear. What did you say about his belt?
24 A. Um, when me and Melissa were walking back to
25 go to recess, she said she saw his belt on his desk.
26 Q. Okay. So you didn't see it, but she did?
27 A. Yes.
28 THE COURT: I'm sorry, could I have last

1 answer read back.

2 (The requested record is read.)

3 THE COURT: Okay, thank you.

4 BY MR. SCHUMB:

5 Q. I want to make sure my question's clear. You
6 yourself didn't see the belt on Mr. Chandler's desk?

7 A. Yes.

8 Q. Yes, you didn't see it?

9 A. Yes.

10 Q. Um, oh, um, you made a comment about how you
11 bit down on this strawberry candy object that he had in
12 your mouth.

13 A. Yes.

14 Q. And you said he was -- I think you testified
15 that he was moving it back and forth in your mouth
16 while you were tasting it?

17 A. Yes.

18 Q. Then at one point you bit down on it?

19 A. Yes.

20 Q. Did that stop the candy from moving?

21 A. Sometimes he would just leave it in there for
22 a moment and then continue moving it.

23 Q. That's probably how he knew you bit down on it
24 was because he was moving it back and forth or about
25 to.

26 MS. FILO: Objection, calls for speculation.

27 THE COURT: Sustained. Rephrase.

28 You're not doing anything wrong, I'm like the

1 umpire. I call balls and strikes. I decide if the
2 questions are right or not.

3 MR. SCHUMB: She's the king. Good to be the
4 king.

5 BY MR. SCHUMB:

6 Q. Um, but when you bit down on it, did he move
7 it shortly afterwards, right around that time?

8 A. He stopped.

9 Q. Okay. Did he start up again?

10 A. Um, he just said don't bite and then he
11 continued.

12 Q. Okay. Did you bite it more than once?

13 A. No, only once.

14 Q. Okay. Was it kind of hard like candy?

15 A. No.

16 Q. Okay. Was it like a soft, like a strawberry
17 roll or strawberry gummy roll like a fruit roll?

18 A. Um, it was soft like jelly maybe.

19 Q. Okay. How far into it did you bite?

20 A. Um, somewhere in the middle.

21 Q. Did it kind of break the sides a little bit of
22 it when you bit it?

23 A. No.

24 Q. But your teeth closed down to -- how was the
25 distance you think between your teeth when you bit down
26 on it, say as big as my pencil, pen there? Do you
27 think that was how close you're teeth got together?

28 A. No. It was big.

1 Q. A little bigger?
2 A. Yeah.
3 Q. Um, now, I think you said did Christina and
4 Ashlyn do it too?
5 A. Yes. Well, it was Christine.
6 Q. Christine, I'm sorry, but was it the same time
7 you did it?
8 A. No.
9 Q. On this time when he, when you bit down on it,
10 were his knees touching your knees?
11 A. Um, no.
12 Q. Was he -- where was he, do you know?
13 A. He was like a few inches away.
14 Q. Okay. What part of his body could you feel
15 next to you?
16 A. What?
17 Q. Could you feel any part of his body next to
18 you?
19 A. No.
20 Q. Um, and you said you never felt his hand on
21 the object?
22 A. No.
23 Q. Um, that was any time that he did it?
24 A. Yes.
25 Q. Okay. Um, do you remember it all very well,
26 or, since it's been a long time or is your memory a
27 little faded on exactly what happened?
28 A. It's faded a little.

1 Q. Okay. Um, did you also, um, hear water
2 running from time to time?
3 A. Yes.
4 Q. And when would you hear the water running?
5 A. First he would do it to me or to Melissa and
6 then he would go over to the sink and then come back to
7 do it to the next person.
8 Q. And was this the feet thing?
9 A. No, the mouth thing.
10 Q. Okay. Have you talked to anybody about what
11 happened with Mr. Chandler besides the police?
12 A. I talked to you guys.
13 Q. Okay.
14 A. And that's it.
15 Q. That's it. Did you ever talk to Ms. Filo
16 before today, Ms. Allison?
17 A. Oh, yes..
18 Q. When did you talk to her?
19 A. Um, when we were here on last Tuesday, I
20 think.
21 Q. What did you come down here for?
22 A. To look at the court and meet, um, Allison.
23 Q. Okay, that's fine. Did you talk at all about
24 what happened with Mr. Chandler that day?
25 A. Um, a little.
26 Q. What did you talk about with her?
27 A. About the, um, feet thing and the mouth thing.
28 Q. Okay. Did she ask you some questions about

1 what happened?
2 A. I don't remember.
3 Q. You didn't just kind of volunteer, did you?
4 You didn't bring it up, did you?
5 Is that a "no"?
6 A. Yes.
7 Q. Okay. Did Ms. Filo bring what happened with
8 the feet and the mouth up to you?
9 A. Um, I didn't understand.
10 Q. Was it Ms. Filo that brought up the feet and
11 the mouth things?
12 A. Yes.
13 Q. Um, and did you talk to anybody before that?
14 A. No.
15 Q. About this? How about your mom or your
16 friends or any relatives?
17 A. No.
18 Q. How about Anna sitting next to you?
19 A. Uh, when I was talking to the police
20 officers. She was behind me.
21 Q. Okay, good. Um, was that when you talked to
22 Mr. -- was it Mr. Pierce that you talked to, Detective
23 Pierce sitting right there? Or was it somebody else?
24 A. Somebody else.
25 Q. I think it was somebody else. Oh, that's
26 right. Let me go check and see if I have some more
27 questions. Let me just look at my notes real quick.
28 A. Okay.

1 Q. Really quick. Ms. W., sorry. When you were
2 in the library, do you know the name of the librarian?

3 A. Um.

4 Q. Patricia? Travers? Ms. Travers?

5 A. No. I know it starts with an R.

6 Q. What does she look like?

7 A. She has black long hair with bangs.

8 Q. Okay. Um, was she there the day that
9 Mr. Chandler came and took you to the room?

10 A. I don't remember.

11 Q. Somebody was in the library probably to watch
12 the rest of the kids, right?

13 A. Yes.

14 Q. Um, you don't remember who was there?

15 A. No.

16 MR. SCHUMB: Thank you. No further
17 questions.

18 THE COURT: Is there any redirect?

19 MS. FILO: Just one question.

20 BY MS. FILO:

21 Q. Ms. W., you said that, um, I think that you
22 said that, when the first time you sat in a chair and
23 something was put in your mouth, it was one of these
24 student chairs?

25 A. Yes.

26 Q. Did you ever sit in a chair, other than a
27 student chair? Did you ever sit in Mr. Chandler's
28 chair?

1 A. No.

2 MS. FILO: That's all I have. Thank you very
3 much.

4 THE COURT: Recross?

5 MR. SCHUMB: No. None, Your Honor, thank you.

6 THE COURT: Is she excused or would either
7 side like her to remain on phone standby?

8 MS. FILO: Excused, thank you.

9 MR. SCHUMB: Excused, Your Honor.

10 THE COURT: Ms. W., I've listened very
11 carefully and I don't have any questions. I think I
12 understood it. Um, you're excused.

13 (A recess is taken.)

14 THE COURT: Thank you. We're back on the
15 record.

16 Ms. A., would you step forward please.

17 COURT CLERK: Raise your right hand.

18 A.:
19 COURT CLERK: Do you promise that everything
20 you say here today will be the truth and nothing but
21 the truth?

22 THE WITNESS: Yes.

23 COURT CLERK: Thank you. Please have a seat.

24 THE COURT: All right. Miss A., um, make
25 yourself comfortable please and speak into the
26 microphone. I know it's really weird. It's like
27 American Idol. We all have to do that because it's a
28 really big courtroom. We talked about the rules. You
promise to tell the truth, all right? Thank you.

1 Please proceed.

2 MS. FILO: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. FILO:

5 Q. Are, um, Ms. A., can you tell me how old you
6 are right now?

7 A. 9.

8 Q. 9 years odd. When is your birthday?

9 A. June 20th.

10 Q. June 20th. So you're just about to turn 10.
11 So you were born in, I'm sorry, in 2002?

12 A. 2002.

13 Q. The one rule that we probably didn't talk
14 about that I have to tell you about now is, when you
15 come to court, it's really important that you use
16 actual words. So even though I know that's what you're
17 saying when you answer a question, by nodding your
18 head, this nice lady right here has to write everything
19 down. And she doesn't know what to write down when you
20 nod your head, Okay?

21 MR. SCHUMB: Your Honor, um --

22 THE WITNESS: Okay.

23 MR. SCHUMB: -- may we approach?

24 THE COURT: Sure.

25 (Discussion off the record.)

26 MS. FILO: Your Honor, can I just have a
27 minute?

28 THE COURT: Please.

1 MS. FILO: Actually, can we approach?
2 THE COURT: Sure.
3 (Discussion off the record.)
4 MS. FILO: Can I resume?
5 THE COURT: Please.
6 MS. FILO: Okay.
7 BY MS. FILO:
8 Q. So, Ms. A., it is really important that you
9 use actual words. Can you do that for me?
10 A. Yes.
11 Q. Okay. Um, so, Ms. A., what grade are you in
12 right now?
13 A. Fourth.
14 Q. What school do you go to?
15 A. O.B. Whaeley.
16 Q. Where did you go to school when you were in
17 third grade?
18 A. O.B. Whaeley.
19 Q. Who was your teacher in the third grade?
20 A. Mr. Chandler.
21 MS. FILO: Counsel, is there a stipulation to
22 I.D.?.
23 MR. SCHUMB: Yes.
24 BY MS. FILO:
25 Q. Ms. A., I want to ask you about -- um, strike
26 that. Did you talk to some police officers earlier
27 this year?
28 A. Yes.

1 Q. Do you know why you talked to them?
2 A. About what happened.
3 Q. Okay. When you say, "about what happened,"
4 what happened where?
5 A. In the school.
6 Q. At the school? What happened in the school?
7 When?
8 A. When I was in third grade.
9 Q. Can you tell me, um, just kind of in general
10 what you talked to the police about, um, about what
11 happened in third grade?
12 MR. SCHUMB: Objection, um, relevance,
13 hearsay.
14 THE COURT: Overruled on that ground.
15 THE WITNESS: Can you repeat the question?
16 BY MS. FILO:
17 Q. Sure. What was it you were talking to the
18 police about?
19 A. What Mr. Chandler did.
20 Q. Okay. What did Mr. Chandler do?
21 A. Stuff like he wasn't supposed to do.
22 Q. Stuff like what?
23 A. He didn't supposed to do.
24 Q. Stuff that he wasn't supposed to do?
25 "Yes"?
26 A. Yes.
27 Q. Okay. Tell me what kind of stuff you're
28 talking about.

1 A. Well, what he did in the room.
2 Q. What room are you talking about?
3 A. I don't remember.
4 Q. Okay. Um, was this something that happened
5 while you were at school?
6 A. Yes.
7 Q. You said it happened in a room.
8 A. Yes.
9 Q. Was it a classroom?
10 A. Yes.
11 Q. Whose classroom was it?
12 A. Mr. Chandler's.
13 Q. Okay. And what happened in Mr. Chandler's
14 classroom that he wasn't supposed to do? Can you tell
15 me about what that was?
16 A. He sat on me.
17 Q. He what?
18 A. He told me to sit in a chair.
19 Q. Um, he told you to sit in a chair in the
20 classroom?
21 A. (Nods head.)
22 Q. Who else was there when he told you to sit in
23 a chair?
24 A. No one.
25 Q. Were you in the classroom by yourself with
26 Mr. Chandler?
27 A. Yes. He told you to sit in a chair.
28 Q. What kind of chair was it?

1 A. A normal chair.

2 Q. A normal chair? Okay. So, Ms. A., I'm going
3 to show you a big picture that we've marked as Defense
4 Exhibit A. And can you tell me what that is? What's
5 in that picture? Does that look like anything that you
6 recognize?

7 A. Mr. Chandler's room.

8 Q. Mr. Chandler's room?

9 A. Yes.

10 Q. So there's a desk right in the middle of the
11 picture, right? Whose desk is that?

12 A. Mr. Chandler's.

13 Q. Okay. And there's a blue chair right behind
14 the desk. Whose chair is that?

15 A. Mr. Chandler's.

16 Q. Okay. And then there's a desk right in
17 front. Um, is that a student's desk?

18 A. Yes.

19 Q. And then there's a blue chair behind the
20 student's desk. Is that a student chair?

21 A. Yes.

22 Q. I think some of the chairs in this classroom,
23 some of the blue plastic chairs, some of them had, they
24 just had four regular legs. And Mr. Chandler's chair
25 has wheels on it. See at the bottom of this chair that
26 has wheels on it? Do you see that?

27 A. (Nods head.)

28 Q. When Mr. Chandler told you to sit in a chair,

1 what kind of chair was it?

2 A. Student's chair.

3 Q. Okay. Where were you sitting when you were
4 sitting in the chair that Mr. Chandler asked you to sit
5 down? Was it any place in this picture or was it some
6 place not in this picture?

7 A. Like over there.

8 Q. Okay. So there's a Post-it with a number "2"
9 and a Post-it with a number "2" and a Post-it with a
10 "W." Was it around any of those?

11 A. "W."

12 Q. Down by where the "W." is on the very right
13 hand bottom corner of the picture?

14 A. Yes.

15 Q. Okay. So you said that Mr. Chandler had you
16 sit in a chair. What happened after you sat down in
17 the chair?

18 A. He gave me something to cover my eyes.

19 Q. He gave you something to cover your eyes?

20 A. Yes.

21 Q. What did he give you?

22 A. A blindfold.

23 Q. A blindfold, okay.

24 A. Yeah.

25 Q. What do you remember? Do you remember
26 anything about the blindfold, like how about what color
27 was it?

28 A. Blue.

1 Q. How did the blindfold stay on your head? Like
2 did it tie in the back? Or did it go around your
3 ears? Or was it like swimming goggles and it had
4 elastic on it? What kind of blindfold was it?

5 A. I just put them on and it closed. When I put
6 them on, it was already ...

7 Q. It was already closed in the back?

8 A. Yeah.

9 Q. You didn't have to tie it or anything?

10 A. Yes.

11 Q. That's correct?

12 A. Yes.

13 Q. Okay. Um, and then what happened after you
14 put the blindfold on?

15 A. Um, I don't remember.

16 Q. You don't remember?

17 A. (Shakes head.)

18 Q. Okay. Um, do you want to take a minute and
19 think about it?

20 A. Yes.

21 Q. Okay. How about I'll ask you another kind of
22 question, all right? Did Mr. Chandler say anything to
23 you when he put the blindfold on?

24 A. Yes.

25 Q. What did he say?

26 A. He said to, um, lick it.

27 Q. "Lick it"?

28 A. (Nods head.)

1 Q. Okay. What was he telling you to lick, do you
2 know?

3 A. No.

4 Q. And when he told you to lick it, um, was there
5 something around your mouth?

6 A. Around here.

7 Q. Kind of around -- you just pointed kind of to
8 your cheeks?

9 A. No. It was inside my mouth.

10 Q. Inside your mouth?

11 A. Yes.

12 Q. Okay. So did you put something in your mouth
13 or did Mr. Chandler put something in your mouth?

14 MR. SCHUMB: Objection, leading.

15 THE WITNESS: Mr. Chandler did.

16 THE COURT: I'll let the question and answer
17 stand. Overruled.

18 BY MS. FILO:

19 Q. Mr. Chandler put it in your mouth?

20 A. Yes.

21 Q. And what was it? Let me ask you another way.
22 What did it, did it have a shape?

23 A. Yes.

24 Q. What shape was it?

25 A. Um, a cone like ice cream.

26 Q. Like a cone?

27 A. Yeah.

28 Q. And did it, um, how big was it?

1 You just held up your fingers like this and
2 you put your two index fingers together and your two
3 thumbs together and made, what I would describe, as
4 kind of an oval. Is that right?

5 A. Yes.

6 Q. Okay. Was it about as big as I'm holding up
7 my fingers to be?

8 MR. SCHUMB: Objection, leading.

9 THE COURT: Overruled.

10 THE WITNESS: A little. Um, yes.

11 BY MS. FILO:

12 Q. About that size?

13 A. Yes.

14 Q. Okay. And Mr. Chandler told you to lick it?

15 A. Yes.

16 Q. Did it taste like anything?

17 A. No.

18 Q. Did it, what did it feel like? Could you tell
19 what it felt like?

20 A. Soft.

21 Q. Can you think of any other words that would
22 describe what it felt like? Or is that the best word?

23 A. Best word.

24 Q. Okay. Do you remember talking to some police
25 officers earlier this year?

26 A. Yes.

27 Q. Do you remember describing it to the police
28 officers as kind of squishy?

1 A. Yes.

2 Q. Could you tell whether or not the oval thing

3 was --

4 MR. SCHUMB: Objection, misstates the

5 testimony. Conical.

6 THE COURT: Could you rephrase?

7 MS. FILO: Your Honor, I think the witness has

8 described it now as an oval object.

9 THE COURT: Well, it's a little difficult

10 because we're getting your vocabulary instead of hers.

11 Ms. A., what do you want to call that thing

12 that went in your mouth?

13 THE WITNESS: I don't know.

14 THE COURT: You can just call it "the thing"

15 if you want.

16 THE WITNESS: Yeah.

17 THE COURT: Okay. Let's use the child's

18 vocabulary.

19 BY MS. FILO:

20 Q. Ms. A., when the thing was in your mouth,

21 could you tell whether or not it tasted like any kind

22 of food that you had ever had before?

23 A. No.

24 Q. Is it -- it did not taste like food?

25 A. No.

26 Q. And I think you said it really had no taste;

27 is that right?

28 A. Yes.

1 Q. Did you have any other -- can you think of any
2 other word that would describe what the thing felt
3 like?

4 A. No.

5 Q. Do you remember describing it to the police
6 officers --

7 MR. SCHUMB: Your Honor, I'm going to object.
8 I think if we're going to use the statement to refresh
9 her recollection, we ought to have the statement to
10 know what she's referring to.

11 THE COURT: Well, this isn't the case of
12 recollection refreshed. We have to wait and see what
13 her answer is.

14 Go ahead.

15 MS. FILO: Thank you.

16 BY MS. FILO:

17 Q. Do you remember describing to the police
18 officers as skin, it felt like skin?

19 A. Yes.

20 Q. Is that what it felt like?

21 A. Yes.

22 Q. When Mr. Chandler put this thing in your
23 mouth, where was he around you? Could you tell?

24 A. In front of me.

25 Q. Could you feel anything in front of you?
26 Could you feel any part of him in front of you?

27 A. No.

28 Q. Could you feel his legs in front of you?

1 A. Yeah.

2 Q. Ms. A., when did this -- um, when did this
3 happen? What time during the day did it happen?

4 A. At recess.

5 Q. And how did you -- how come you were staying
6 in at recess?

7 A. Um, when I was in school, he told me to come.

8 Q. So when you were in the classroom with all the
9 other students, he told you to come back at recess?

10 A. Yes.

11 Q. Is that right?

12 A. Yeah.

13 Q. Did you know why you were coming back?

14 A. No.

15 Q. Okay. When you came back, um, you said that
16 you sat in the chair and then the blindfold was on.
17 Did you know whether or not the door to the classroom
18 was open or closed?

19 A. Yes. It was closed.

20 Q. How many times did you come to Mr. Chandler's
21 classroom at recess and sit in a chair and have the
22 blindfold put on you? Do you know how many times that
23 happened?

24 A. Almost like four times.

25 Q. Are you sure about that number or could it be
26 a little bit more or a little bit less?

27 A. Little bit more.

28 Q. Is that your best estimate?

1 MR. SCHUMB: Objection, leading.

2 THE WITNESS: A little bit more.

3 BY MS. FILO:

4 Q. So you've told us about this very first time
5 when he told you to come back at recess and you sat in
6 the chair and he put the thing in your mouth. Is that
7 right?

8 A. Yes.

9 Q. On that very first time that we're talking
10 about, did he put anything else in your mouth, other
11 than the thing you've described for us?

12 A. That's all he put in my mouth.

13 Q. So he didn't give you any candy or chocolates
14 or crackers or anything like that?

15 A. When I, when we were done, um, he gave me a
16 lollipop.

17 Q. While the thing was in your mouth, did you
18 hear any noises or any sounds?

19 A. Yes.

20 Q. What did you hear?

21 A. To suck what I had in my mouth.

22 Q. So he was telling you to suck what you had in
23 your mouth?

24 A. Yes.

25 Q. Did you hear anything else?

26 A. No.

27 Q. Ms. A., did anything -- um, and I'm just
28 talking about this first time. Did anything come out

1 of the thing that was in your mouth? Does that make
2 sense?

3 A. Yes.

4 MR. SCHUMB: Objection, leading.

5 THE COURT: Overruled.

6 BY MS. FILO:

7 Q. So something did come out?

8 A. Yes.

9 Q. What was it, do you know? Can you describe it
10 for me?

11 A. Kind of like water or something.

12 Q. So it was liquid?

13 A. Yeah.

14 Q. Did it taste like anything?

15 A. No.

16 Q. So when I taste water, I think water tastes, I
17 mean, water tastes like water. You know what water
18 tastes like, right?

19 MR. SCHUMB: Objection, Your Honor, leading,
20 coaching.

21 THE COURT: The last question was. Please
22 rephrase.

23 MS. FILO: Sure.

24 BY MS. FILO:

25 Q. Do you know what water tastes like?

26 A. Salt or something.

27 Q. Have you had water to drink before? Had you
28 had a glass of water to drink?

1 A. Yes.
2 Q. Do you know what water tastes like?
3 A. No.
4 Q. You mean you can't -- do you mean you don't
5 know what it tastes like or you can't describe it?
6 A. I can't describe it. I don't know what it
7 tastes like.
8 Q. Okay. Um, so if I -- Ms. A., I'm going to
9 give you a cup and I promise it's perfectly safe. Can
10 you take a sip of that for me?
11 What is that?
12 A. Water.
13 Q. Water, okay. The stuff that came out of the
14 thing that was in your mouth when you were in
15 Mr. Chandler's classroom, did it taste like that or did
16 it taste like something else?
17 A. Something else.
18 Q. Okay. So it did not taste like water.
19 A. Yes.
20 Q. Correct?
21 A. Yes.
22 Q. Okay. Did it taste good or bad?
23 A. Bad.
24 Q. Did any of the liquid come out of your mouth
25 or did it all stay in your mouth?
26 A. One time he spilled a little. A little.
27 Q. When the thing was in your mouth, how far in
28 your mouth was it?

1 A. It was just in my mouth.
2 Q. Just in your mouth? Okay. Ms. A., is that
3 everything that you remember about the very first time
4 that you played the game with Mr. Chandler?
5 A. Yes.
6 Q. Did Mr. Chandler say anything to you after the
7 blindfold, after you took the blindfold off?
8 A. No.
9 Q. Ms. A., on that very first time, could you
10 ever see anything through the blindfold?
11 A. No.
12 Q. You said that you think that this kind of
13 thing happened about four times; is that right?
14 A. Yeah.
15 Q. Was each of the times the same or was any one
16 of them different?
17 A. One time it was different.
18 Q. Can you tell me what was different about that
19 time?
20 A. He put me down.
21 Q. He put you down where?
22 A. On the floor.
23 Q. What happened when you were down on the floor?
24 A. He, um, had a ball and, um, moved it in the
25 back of me.
26 Q. Okay.
27 MR. SCHUMB: Your Honor, could I have the
28 answer reread.

1 (The requested record is read.)
2 BY MS. FILO:
3 Q. When you say that you, um, got down on to the
4 ground, is that what you said?
5 A. Yes.
6 Q. How on the ground? What were you -- um, how
7 were you on the ground?
8 A. Like a dog.
9 Q. Were you on your hands and your knees?
10 A. Yes.
11 Q. Um, and what happened? Were your eyes covered
12 that time? Did you have the blindfold on?
13 A. No.
14 Q. And can you tell me what happened once you
15 were on your hands and knees? You said there was a
16 ball?
17 A. (Nods head.)
18 Q. What kind of a ball?
19 A. Um, bouncy ball.
20 Q. And what did Mr. Chandler do with the bouncy
21 ball?
22 A. Pushed it at the back of me.
23 Q. Okay. Was he standing up or was he -- where
24 was he? You said he was behind you, right?
25 A. Yes.
26 Q. What was he doing? Um, was he standing up?
27 A. Down.
28 Q. He was down?

1 A. (Nods head.)
2 Q. Okay. How was he down?
3 A. Like sitting down.
4 Q. Was he sitting down on his bottom?
5 A. Yeah.
6 Q. And where was he putting the ball? You said
7 it was behind you. But what does behind you mean?
8 A. Like on my butt.
9 Q. And what was he doing with the ball on your
10 butt? You said he was pushing it?
11 A. Yes.
12 Q. What did that make you do? What did that make
13 your body do?
14 A. Not comfortable.
15 Q. Is that the only time that that happened where
16 you were on the ground? That only happened one time?
17 A. Yes.
18 Q. Yes? Could you -- um, you said you did not
19 have the blindfold on that time?
20 A. Yeah.
21 Q. That's correct?
22 A. Yes.
23 Q. So you could see everything?
24 A. Yes.
25 Q. Did you see, um, anything behind you? Did you
26 see what Mr. Chandler was doing?
27 MR. SCHUMB: Objection, asked and answered.
28 THE COURT: Overruled.

1 MR. SCHUMB: Sorry, I didn't hear the answer.

2 BY MS. FILO:

3 Q. We haven't had one yet.

4 THE COURT: I'm sorry, I interrupted.

5 THE WITNESS: No.

6 BY MS. FILO:

7 Q. That was the only time where something was
8 different; is that right?

9 A. Yes.

10 Q. The other times you were sitting in the chair
11 with the blindfold on?

12 A. Yes.

13 Q. Ms. A., did you ever -- did you ever look
14 either underneath or through the blindfold? Could you
15 ever peek a little bit and see while you were --

16 MR. SCHUMB: Objection, leading.

17 THE COURT: Overruled. Go ahead.

18 BY MS. FILO:

19 Q. Did you peak a little bit while you were
20 sitting in the chair?

21 A. Yes.

22 Q. Ms. A., what did you see when you could, um,
23 peak out from the blindfold?

24 A. Hair.

25 Q. What color was the hair?

26 A. Black.

27 Q. What else could you see?

28 A. That's all.

1 Q. Do you remember telling the police officers
2 that you could see skin?
3 MR. SCHUMB: Objection, Your Honor. There is
4 no transcript that she's reading from and so I don't
5 think that that's refreshing her recollection.
6 THE COURT: It's not refreshing recollection
7 until she says she doesn't remember. We'll see.
8 MR. SCHUMB: Then leading.
9 THE COURT: Overruled.
10 BY MS. FILO:
11 Q. Do you remember telling the police officers
12 that you saw skin?
13 A. Yes.
14 Q. Did you see skin?
15 A. Yes.
16 Q. Could you tell whether or not Mr. Chandler had
17 his pants on or down?
18 MR. SCHUMB: Objection, leading.
19 THE COURT: Um, could you rephrase please.
20 BY MS. FILO:
21 Q. Could you tell whether or not Mr. Chandler had
22 had his pants up around his waist?
23 MR. SCHUMB: Objection, leading.
24 THE COURT: Overruled.
25 THE WITNESS: I don't know. But when I was
26 going, um, he opened the closet and I think I saw him
27 pulling his zipper.
28 \\\

1 BY MS. FILO:

2 Q. And you say that that was around the closet;
3 is that right?

4 A. Yes.

5 Q. Okay. So in Defense Exhibit A, in this big
6 picture, there's kind of a tall closet and then there's
7 some shorter cabinets that look like they're about the
8 height of my waist. Was it one of these cabinets or
9 one of these closets?

10 A. Yes.

11 Q. Which closet was it?

12 A. The big one.

13 Q. The big tall one that says, "group prizes"?

14 A. Yes.

15 Q. And you said you thought you saw him zipping
16 up his zipper?

17 A. Yes.

18 Q. How many times did you see that happen?

19 A. One time.

20 MR. SCHUMB: Objection.

21 THE COURT: What's the legal basis?

22 MR. SCHUMB: I was just -- she said she
23 thought so the question was leading, misstates the
24 testimony, but ...

25 THE COURT: Um, overruled.

26 BY MS. FILO:

27 Q. Um, Ms. A., do you think that you could draw
28 for us what it was that you saw?

1 A. Yes.

2 Q. So if I give you a piece of paper and my
3 pen --

4 MR. SCHUMB: May he approach, Your Honor?

5 THE COURT: Sure.

6 (Discussion off the record.)

7 THE COURT: We'll have that marked People's
8 Number 2.

9 (People's Exhibit 2 is marked.)

10 BY MS. FILO:

11 Q. Could you draw for me what you saw when you
12 peeked out from the blindfold?

13 THE COURT: Here. This is for drawing. You
14 can draw or talk, but not both at the same time. If
15 you're going to draw, draw as big as you can, but make
16 a great big drawing so I can understand it.

17 We'll have that marked People's next in
18 order. That will be People's Exhibit 3.

19 (People's Exhibit 3 is marked.)

20 MS. FILO: Okay.

21 THE COURT: Hold on. Ms. A., now the piece of
22 paper has a name and the name is number 3. So that's
23 what we're going to call it.

24 BY MS. FILO:

25 Q. Okay. So, Ms. A., you kind of made an oval
26 shape; is that right?

27 A. Yes.

28 Q. Is that the thing that was in your mouth?

1 A. Yes.

2 MR. SCHUMB: Objection, lacks foundation.

3 THE COURT: Overruled.

4 BY MS. FILO:

5 Q. And then you drew a bunch of lines around the

6 oval. What is that?

7 A. Hair.

8 Q. Okay. Ms. A., um, when you were in

9 Mr. Chandler's classroom, and he put this, um, he put

10 this thing in your mouth, how did you feel?

11 A. Not comfortable.

12 Q. Not comfortable, okay. And I just want to

13 make sure. Did the liquid stuff come out of the thing

14 while the thing was still in your mouth?

15 MR. SCHUMB: Objection, leading.

16 THE COURT: Overruled.

17 MS. FILO: It's a "yes" or "no" question.

18 THE WITNESS: Um, can you repeat the

19 question?

20 BY MS. FILO:

21 Q. Sure. Did the liquid stuff come out while

22 this thing was still in your mouth?

23 MR. SCHUMB: Leading.

24 THE WITNESS: Yes.

25 THE COURT: Overruled.

26 BY MS. FILO:

27 Q. I think you said that the thing was the only

28 thing that he put in your mouth; is that right?

1 A. Yes.

2 Q. Were you supposed to guess what the thing
3 was? Did he ever give you any instructions, other than
4 to lick it or suck it? Did he give you any other
5 instructions about what to do?

6 A. No.

7 Q. Those were the only instructions?

8 A. Yes.

9 Q. Okay. Okay, um, do you remember when these
10 four times happened? Like do you remember -- I know it
11 was a long time ago now.

12 A. Yes.

13 Q. Was it before Christmas or after Christmas?
14 And if you don't remember, that's okay.

15 A. No.

16 Q. You don't remember?

17 A. No.

18 Q. Okay. Okay, um, Ms. A., I think that that is
19 all the questions I have. I'm going to look at my
20 notes really quick and make sure. Is that okay?

21 A. Yes.

22 Q. All right, thank you.

23 Okay, Ms. A., I guess I do have a few other
24 questions. The time you told us about you were on your
25 hands and knees?

26 A. Yes.

27 Q. Did you look kind of beneath your legs at all?

28 A. Yes.

1 MR. SCHUMB: Objection, leading.
2 THE COURT: Overruled.
3 BY MS. FILO:
4 Q. What did you see when you looked between your
5 legs?
6 A. I saw him at the back of me.
7 Q. Okay. Could you see anything else?
8 MR. SCHUMB: Objection, leading, misstates the
9 testimony.
10 THE COURT: Overruled.
11 THE WITNESS: The first time I saw liquid
12 coming.
13 BY MS. FILO:
14 Q. Can you tell me about the liquid that you saw?
15 A. No.
16 Q. Where did you see the liquid? Where?
17 A. At the back of me.
18 Q. Okay. Um, and could you see what the liquid
19 was, where it came from?
20 A. No.
21 Q. It just was behind you some place?
22 A. Yeah.
23 Q. Did the liquid, um, have a color or a smell or
24 anything like that?
25 A. Color.
26 Q. What color was it?
27 A. Yellow.
28 Q. Did any of the liquid get on you?

1 A. No.

2 Q. When you were on your hands and knees, was any

3 part of Mr. Chandler's body touching any part of your

4 body?

5 A. My legs.

6 Q. What part was, what part of Mr. Chandler's

7 body was touching your legs?

8 A. Here.

9 MS. FILO: The witness is grabbing her, um,

10 like almost her ankles?

11 A. Yeah.

12 THE COURT: I'm sorry, I didn't see that.

13 Was it your ankles?

14 THE WITNESS: Yeah.

15 THE COURT: That was Mr. Chandler's part?

16 THE WITNESS: Yeah.

17 THE COURT: And your body part was, you said,

18 your knees?

19 THE WITNESS: Yes.

20 THE COURT: I got it.

21 MR. SCHUMB: Your Honor, her body part was her

22 ankles.

23 THE COURT: I'm sorry, I'm getting this all

24 wrong. What part of your body was touched?

25 THE WITNESS: Um, my ankles.

26 THE COURT: What part of Mr. Chandler's body?

27 THE WITNESS: Um, he was touching my ankles.

28 \\\

1 BY MS. FILO:
2 Q. With what?
3 A. With his hands.
4 Q. With his hands. With both hands on both
5 ankles?
6 A. Yeah.
7 Q. Could you, um, so could you move? Did you
8 ever try to move?
9 A. No.
10 Q. Ms. A., did you tell anybody about these times
11 that Mr. Chandler had you stay back at recess?
12 A. Yes.
13 Q. Who did you tell?
14 A. My cousin.
15 Q. And what's your cousin's first name?
16 A. Noemi.
17 Q. Is Noemi, N-O-E-M-I?
18 A. Yes.
19 Q. And why did you decide to tell know Noemi?
20 A. Because I, um, I smelled, um, I was drinking
21 and I smelled that and she told me, she told me that if
22 something happened somewhere and I told her.
23 Q. Okay. You said you were drinking? What were
24 you drinking?
25 A. I don't know, um, it was pink.
26 Q. Ms. A., did you think that you were going to
27 get in trouble if you told anybody?
28 MR. SCHUMB: Objection, leading.

1 THE COURT: Overruled.
2 BY MS. FILO:
3 Q. Did you think you were going to get in trouble
4 if you told anybody about what was happening at recess?
5 A. No.
6 Q. Did you ever think that you were going to get
7 arrested if you told what was happening at recess?
8 A. A little.
9 Q. What?
10 A. A little.
11 Q. A little. You thought that? Tell me what you
12 thought.
13 A. That I was going to jail.
14 Q. You thought you were going to go to jail if
15 you told anybody what was happening?
16 A. Yes.
17 Q. Okay. Did that make you scared?
18 A. Yes.
19 Q. Thank you very much for answering all of my
20 questions. I think Mr. Chris has some questions for
21 you, okay?
22 A. Okay.
23 MS. FILO: Thank you, Ms. A.
24 THE COURT: Thank you. Mr. Schumb?
25 MR. SCHUMB: Thank you.
26 BY MR. SCHUMB:
27 Q. Ms. A., Ms. A., do you remember studying Helen
28 Keller when you were in Mr. Chandler's class.

7

1 A. No.

2 Q. Do you remember telling the officer when you

3 were interviewed that you recalled that Helen Keller

4 was somebody you studied?

5 A. No.

6 Q. Do you ever remember learning about the, um,

7 girl that couldn't hear and couldn't see, learning

8 about that last year?

9 A. No.

10 Q. Um, did you ever, um, was there ever, was

11 anyone ever with you when you played this game with

12 Mr. Chandler?

13 A. No.

14 Q. Was ever, um, was anyone else ever in the room

15 when you played this game with Mr. Chandler?

16 A. No.

17 Q. Did you ever see anybody --

18 A. No.

19 Q. Hold on. Let me ask the question first. Did

20 you ever see anybody play the game when Mr. Chandler

21 put things in their mouth like candy or chocolate?

22 A. Um, yes.

23 Q. Okay. And did that happen in the room? In

24 the room here, Exhibit A?

25 A. Yeah.

26 Q. Cool. Who did you see play the game? Do you

27 remember the names of the people you saw play it?

28 A. April, I think.

1 Q. Pardon me?
2 A. A boy named Kevin.
3 Q. A boy named Kevin, okay. Didn't Mr. Chandler
4 usually pick two at a time to play?
5 A. No.
6 Q. Okay. Um, did you ever see Mr. Chandler have
7 students on the floor covering themselves and then
8 putting things on their feet to see if they could tell
9 what it was? Do you ever remember him doing that?
10 A. Just touching it.
11 Q. Pardon me?
12 A. Just touching. One time we played a game and
13 we covered our eyes and he gave us stuff and we were
14 touching it and we were guessing what it was.
15 Q. Yeah, he was touching you, touching with
16 things on your feet and you were guessing what it was?
17 A. Yeah.
18 Q. Okay. Was that in front of the whole class?
19 A. Yes.
20 Q. Okay. And you actually played it on the
21 floor?
22 A. Yes.
23 Q. Cool. Um, who else was playing that day? Was
24 there just one other person? Was that the boy? Did he
25 play with you?
26 A. No.
27 Q. Who was playing with you that day?
28 A. The classroom.

1 Q. Was there another person alongside you that
2 was playing with you at the same time or was it just
3 you?
4 A. No. Just me.
5 Q. That was in front of the whole class?
6 A. Yeah.
7 Q. Cool. Did you only do that one time?
8 A. Yes.
9 Q. Where you played it in front of the whole
10 class?
11 A. Yeah.
12 Q. Okay. Was that day -- did you see other
13 people playing too or were you the only one that played
14 that day in front of the whole class?
15 A. Um --
16 Q. Did you see him playing with other kids
17 sitting in the chair and put food in their mouth and
18 stuff?
19 A. Just the boy named Kevin.
20 Q. Okay. You saw him doing that with Kevin?
21 A. No.
22 Q. How do you know he did it with Kevin?
23 A. Well, um, he was in the room and he and the
24 boy was inside there one time too.
25 Q. Okay. But you said you didn't see it, right?
26 A. No.
27 Q. No, you didn't see it or no, you did see it?
28 A. I did see it.

1 Q. You did see it, great. Did you see him put
2 food in Kevin's mouth and him try to decide what it
3 was?
4 A. Yeah.
5 Q. Okay. Did everybody have fun that day?
6 A. Yes.
7 Q. Okay. Did you have fun that day?
8 A. Yes.
9 Q. Cool. Good. All right. Um, so then, um,
10 there were some other times when you played the game
11 alone with Mr. Chandler?
12 A. Yes.
13 Q. Was it after the time when you played the game
14 in front of the whole class?
15 A. Um, yes.
16 Q. Not before? Could it have been before?
17 A. Yeah, it was before.
18 Q. It was before?
19 A. Yeah.
20 Q. Okay. Were all the times that you played the
21 game by yourself with Mr. Chandler before you played it
22 in the class?
23 A. We just played a game one time.
24 Q. You just played the game one time with
25 Mr. Chandler?
26 A. Yeah.
27 Q. Alone or in front of the class?
28 A. In front of the class.

1 Q. Okay. And then you played it with him alone,
2 I think you said maybe four times?

3 A. Yeah.

4 Q. Were all those four times before you played it
5 with him the one time in front of the whole class?

6 A. Yeah.

7 Q. Hey, on one of those times when you were
8 playing the game with Mr. Chandler by himself, did
9 somebody come in the room? Did Ms. V., come in the
10 room?

11 A. No.

12 Q. You didn't hear her knock on the door and come
13 in?

14 A. No.

15 Q. Um, now, let's see. Um, now, when you played
16 the game with Mr. Chandler, did he ever, um, put like
17 candy in your mouth, try different kinds of candy?

18 A. Yes.

19 Q. And didn't you like different flavors? You
20 would ask him, give me a different flavor. Do you
21 remember that?

22 A. No.

23 Q. Okay. Do you remember he would try different
24 flavors with you, right?

25 A. Yes.

26 Q. What flavors do you remember that he tried
27 with you?

28 A. Grape.

1 Q. Was there strawberry? Um, what else?
2 A. I think it was one, another one was coconut.
3 Q. Coconut? Um, did he ever, um, try
4 chocolates? Did he ever put chocolate in your mouth
5 and have you ever try chocolate when you were
6 blindfolded?
7 A. No.
8 Q. You didn't get any chocolate? How did that
9 happen? Do you like chocolate?
10 A. Yes.
11 Q. Okay. Um, and was the flavor, it was usually
12 some kind of lollipop or something like that, candy?
13 A. Yes.
14 Q. And on each of the four times when he did it
15 by himself, did he always have candy?
16 MS. FILO: Objection, Your Honor, misstates
17 the witness' testimony.
18 THE WITNESS: Not always.
19 THE COURT: The answer will stand.
20 BY MR. SCHUMB:
21 Q. You sure about that? Didn't he always have
22 candy whenever you guys practiced?
23 MS. FILO: Objection, Your Honor, misstates
24 the testimony. There's no evidence that they were
25 practicing.
26 THE WITNESS: Yeah.
27 MR. SCHUMB: May we approach, Your Honor?
28 THE COURT: No. Let's put it on the record.

1 MR. SCHUMB: The answer was yes.
2 THE COURT: The legal basis for the objection
3 was?
4 MS. FILO: Misstates the testimony.
5 MR. SCHUMB: The answer was yes.
6 THE COURT: Overruled.
7 Ms. A., if you're not sure which time the
8 adults are talking about, it's okay for you to ask a
9 question and say which time. That would help me too.
10 Sometimes I don't know which time we're talking about.
11 THE WITNESS: Okay.
12 BY MR. SCHUMB:
13 Q. What I was talking about was all the time.
14 Isn't it true that on all the four times that you
15 practiced the game with Mr. Chandler that he always had
16 candy?
17 A. Um, I'm not sure.
18 Q. Okay. All right. Um, did you ever talk about
19 playing the game with him alone with any of your
20 friends?
21 A. No.
22 Q. You sure?
23 A. Yeah.
24 Q. You didn't talk to Wendy about it?
25 MS. FILO: Objection, Your Honor, asked and
26 answered.
27 THE COURT: Overruled.
28 MS. FILO: Discovery.

1 THE COURT: Overruled. This topic has come up
2 in direct.
3 THE WITNESS: No.
4 BY MR. SCHUMB:
5 Q. Because Wendy testified today.
6 MS. FILO: Objection, Your Honor. Really?
7 You cannot impeach a witness with another witness'
8 testimony.
9 MR. SCHUMB: Sure can.
10 THE COURT: Well --
11 MS. FILO: Improper impeachment would be the
12 legal objection.
13 THE COURT: What's the legal basis for the
14 objection?
15 MS. FILO: Improper impeachment.
16 THE COURT: What's improper about it?
17 MS. FILO: He cannot impeach a witness with
18 another witness' purported testimony.
19 THE COURT: Well, you're objection is it's
20 hearsay, correct?
21 MS. FILO: That too, yes.
22 THE COURT: And it's not a prior consistent
23 statement of this witness?
24 MS. FILO: Correct.
25 THE COURT: Okay. Um, the objection is
26 sustained.
27 MR. SCHUMB: All right. Um, well, it's a
28 prior inconsistent statement.

1 THE COURT: A prior inconsistent statement has
2 to be inconsistent by the declarant.

3 MR. SCHUMB: Okay.

4 BY MR. SCHUMB:

5 Q. Um, did Wendy ever tell you she was playing
6 the game with Mr. Chandler?

7 MS. FILO: Objection, hearsay.

8 THE COURT: Response? Just a moment. Hold
9 on.

10 MR. SCHUMB: It's not for the truth, Judge, at
11 this point. I'm just trying to find out what the
12 dialogue was between these two individuals. It's not
13 for the truth.

14 THE COURT: If it's not for the truth, what is
15 it for?

16 MR. SCHUMB: To lay foundation as to
17 conversations to her friends about this issue.

18 MS. FILO: Those conversations aren't for the
19 truth, then they're irrelevant.

20 THE COURT: Correct if it's offered to explain
21 the witness' actions which are otherwise inexplicable.
22 You're asking about, um, a prior statement to get into
23 other statements about the same subject is offering it
24 for the truth of the matter asserted. Please ask your
25 next question.

26 MR. SCHUMB: All right.

27 BY MR. SCHUMB:

28 Q. So did you ever talk to anybody else? Um,

1 were there other friends that would hang out in recess
2 that were left and you?

3 A. Yes.

4 Q. Did you ever discuss, um, having, playing the
5 game with Mr. Chandler with them?

6 A. No.

7 Q. Um, now, you said that, um, it happened four
8 times and each time it happened pretty much the same
9 way, except for this one time when Mr. Chandler pushed
10 you?

11 A. Yeah.

12 Q. Okay. And, um, how close did the four times
13 happen? Was it within the four times you did it alone
14 with Mr. Chandler? Was it within a couple of weeks?
15 Ten days? Or a month? Do you recall?

16 A. Like four days.

17 Q. Okay. You think it was four days in a row?

18 A. Like one day he did it one time and another
19 day.

20 Q. So maybe it happened like on a Monday and then
21 did it happen the next day like Tuesday or skip a day
22 to like Wednesday?

23 A. Yeah. And then --

24 MS. FILO: Objection, Your Honor, vague, and
25 misstates the testimony.

26 THE COURT: May I have the question read
27 back.

28 (The requested record is read.)

1 THE COURT: The objection is?
2 MS. FILO: It's assuming facts not in
3 evidence.
4 THE COURT: Overruled.
5 Answer the best you can, Ms. A.
6 MR. SCHUMB: I think she did, Your Honor.
7 THE COURT: Could you answer it again because
8 I didn't catch it.
9 THE WITNESS: It was like if he did it on
10 Monday, sometimes he did it the next day and then
11 the --
12 BY MR. SCHUMB:
13 Q. Day after?
14 A. Yeah.
15 Q. So maybe it would skip a day?
16 A. Yeah.
17 Q. But you think he did it about four times alone
18 before you did it in front of the class, right?
19 A. Yeah.
20 Q. Did he tell you that he wanted you to be a
21 leader to help you help the class when he did it in
22 front of the class?
23 A. No.
24 Q. You don't recall him talking about you helping
25 him do the demonstration for the whole class?
26 MS. FILO: Objection, asked and answered.
27 THE WITNESS: No.
28 THE COURT: I'll let the question and answer

1 stand.

2 MR. SCHUMB: Thanks, Judge.

3 BY MR. SCHUMB:

4 Q. Did you -- um, now, now, um, on each of the
5 times when you put -- strike that. So when you play it
6 by yourself with him, um, you'd come into the room and
7 you'd sit in the student chair, right?

8 A. Yes.

9 Q. And then, um, when he handed you the
10 blindfold -- or did he put the blindfold on you?

11 A. Um, he would handle, he handled the blindfold.

12 Q. Handed it to you?

13 A. Yeah.

14 Q. That's a tough word, okay. Did you see him
15 get it out of the cabinet or did you see where he got
16 it from?

17 A. He got, took it out of the cabinet.

18 Q. Okay. Then you put it on your head?

19 A. Yes.

20 Q. That's each of the four times?

21 A. Yes.

22 Q. Okay. And then on each of the four times, um,
23 who took the blindfold off at the end?

24 A. Me.

25 Q. "Me," okay. And would he tell you to take it
26 off or did you just take it off when it was over?

27 A. Took it off when it was over.

28 Q. And, um, did he have the -- um, did he do the

1 candy first before the thing or did he do the thing
2 first before the candy or was there any regular order
3 that he did all the stuff?
4 A. No.
5 Q. No, there was no order?
6 A. No.
7 Q. Okay. And, um, was the candy the thing, was
8 candy one of the things, just candy?
9 A. No.
10 Q. Okay. And so, um, sometimes did he put the
11 thing in your mouth first?
12 A. Yeah.
13 Q. And sometimes he'd put it in last?
14 A. Yes.
15 Q. Do you remember that or are you just agreeing
16 with me?
17 A. I remember that.
18 Q. Now, you haven't -- you never told that to
19 anyone before today, right?
20 A. Yeah.
21 Q. Why is that?
22 A. I never told anyone.
23 Q. Yeah, I know. Why didn't you?
24 A. Because I was scared.
25 Q. Okay. You're not scared now, are you?
26 A. No.
27 Q. Okay. So when -- so you said one time, um,
28 you were able to peak. Was it above or below the

1 blindfold?
2 A. Below.
3 Q. Below, okay. And on that day, did you put the
4 blindfold on yourself?
5 A. Yes.
6 Q. Now, when on all four times when Mr. Chandler
7 was, um, um, putting the thing in your mouth, where
8 were your hands?
9 A. On my lap.
10 Q. On your lap, okay. Every time they were on
11 your lap?
12 A. Yeah.
13 Q. Did you ever move your hands from your lap?
14 A. Sometimes.
15 Q. What would you do with your hands?
16 A. Um, pinch them.
17 Q. Pinch them?
18 A. (Nods head.)
19 Q. You mean grab a hand and pinch it?
20 A. Yeah.
21 Q. Okay. Um, did you ever hold on to the sides
22 of the chair?
23 A. Yeah.
24 Q. Um, on the -- at the times when he had the
25 thing in your mouth, did you ever bring your hands up?
26 A. No.
27 Q. Did you ever push away?
28 A. No.

1 Q. So when -- on all four times when you were
2 alone with Mr. Chandler, your hands were either in your
3 lap or resting on your lap, maybe pinching yourself?
4 A. Yeah.
5 Q. Did you ever touch the blindfold when
6 Mr. Chandler had the thing in your mouth?
7 A. One time.
8 Q. One time, okay. So what time was that?
9 A. I don't know.
10 Q. You never touched the blindfold with your
11 hands, did you?
12 A. I did.
13 Q. How come you didn't tell anybody about that
14 before today?
15 A. Um ...
16 Q. You didn't see out of that blindfold, did
17 you? You couldn't see out of the blindfold.
18 A. I had it in my eyes.
19 Q. You had what in your eyes?
20 A. The blindfold.
21 Q. I know, but you said one time you could see
22 around the blindfold. But that's not true because that
23 blindfold was always right over your face and eyes.
24 A. I saw below.
25 Q. You couldn't see below.
26 MS. FILO: Objection, Your Honor,
27 argumentative and asked and answered.
28 THE COURT: Sustained.

1 BY MR. SCHUMB:

2 Q. Isn't it true that, when you started that
3 session that day, the blindfold was completely over
4 your face, right?

5 A. Yes.

6 Q. You couldn't see anything, right, when you
7 started?

8 A. Yeah, when I started, but --

9 Q. You didn't move the blindfold, did you?

10 MS. FILO: Objection, Your Honor,
11 argumentative.

12 MR. SCHUMB: The answer was no, Your Honor.

13 MS. FILO: Asked and answered.

14 THE COURT: All right. Ms. A., um, take your
15 time. If you want to give an answer, give your whole
16 answer. If you feel that the adults are stopping you
17 from giving the complete answer, just tell me, all
18 right? We want to hear everything the attorneys say
19 and everything you have to say, so it's a good idea to
20 wait until the question stops before you give an
21 answer. And I'll tell the adults to wait until your
22 answer is through before they ask the next question.

23 THE WITNESS: Okay.

24 THE COURT: All right, thank you.

25 Go ahead please. Did you get an answer to
26 that last question?

27 COURT REPORTER: No.

28 THE COURT: Ask it again please.

1 (The requested record is read.)

2 THE WITNESS: No.

3 BY MR. SCHUMB:

4 Q. So if you started out -- this is the day when
5 you say you saw below the blindfold. If you started
6 out that day and the blindfold was in your eyes and you
7 couldn't see and you never moved the blindfold, how
8 were you able to see like you said you were?

9 A. Um, I tried to move it with my eye.

10 Q. You tried to move the blindfold with your
11 eyes?

12 A. Yeah.

13 Q. Ms. A., please tell the truth.

14 THE COURT: Counsel.

15 MS. FILO: Objection, Your Honor.

16 BY MR. SCHUMB:

17 Q. Ma'am, you never saw out of the blindfold that
18 day.

19 MS. FILO: Asked and answered and
20 argumentative.

21 THE COURT: Sustained. Please ask your next
22 question.

23 BY MR. SCHUMB:

24 Q. Ms. A., you wear glasses, right?

25 A. Yeah.

26 Q. You have them on right now?

27 A. (Nods head.)

28 Q. How well do you see without them?

1 A. When I was in third grade I didn't have my
2 glasses.

3 Q. You didn't have glasses in third grade? Your
4 mother said you had glasses.

5 MS. FILO: Objection, Your Honor, hearsay.

6 THE COURT: Sustained.

7 MR. SCHUMB: That's fine.

8 BY MR. SCHUMB:

9 Q. So you didn't have any glasses in third grade;
10 is that true?

11 A. Um, when I was in third grade, I couldn't see
12 a little, but then I told my mom that I couldn't see so
13 then she gave me, we went to the doctor to give me the
14 glasses, to give me the glasses.

15 Q. Did you have glasses in third grade?

16 A. Yes.

17 Q. Okay. And how well do you see without them?

18 A. I saw.

19 Q. Can you see things close up?

20 A. Yes.

21 Q. Can you see things far away without your
22 glasses.

23 A. Yes.

24 Q. What do the glasses help you see? Up close or
25 help you see far away?

26 A. I don't know.

27 Q. Do me a favor and take off your glasses.

28 How many fingers am I holding up?

1 A. Two.
2 Q. How many now?
3 A. Three.
4 Q. If I come closer to you, how many fingers do I
5 have?
6 A. Two.
7 Q. How many now?
8 A. Three.
9 Q. And how many -- did you wear the glasses on
10 the day when you had the blindfold on?
11 A. No.
12 Q. And when the blindfold came off that day, this
13 is the day you say you saw underneath the blindfold,
14 right?
15 A. Yes.
16 Q. Um, first of all, how could you see underneath
17 the blindfold? How big of a space was there that you
18 were able to move with your eyes?
19 A. [Gesturing].
20 Q. Maybe half inch?
21 A. Yeah.
22 Q. And how big was the blindfold? Did it cover
23 your whole face?
24 A. Just my eyes.
25 Q. Okay. And, um, so did the blindfold, um, stay
26 on after you saw Mr., what you say is Mr. Chandler?
27 MS. FILO: Objection, Your Honor, vague as to
28 time.

1 MR. SCHUMB: Let me restate it.

2 BY MR. SCHUMB:

3 Q. On the day when you say you peeked under the
4 blindfold, did it stay on where it had been?

5 A. Yeah.

6 Q. Were you able to still see under it after that
7 or did you stop and see under it?

8 A. Stopped.

9 Q. You stopped. Why did you stop being able to
10 see under it?

11 A. Because my eyes were getting a little dizzy.

12 Q. Your eyes were getting dizzy?

13 A. (Nods head.)

14 Q. Um, now, when was the first time anyone ever
15 asked you about Mr. Chandler, if he had done anything
16 to you?

17 A. My cousin. Then when I told my cousin, she
18 told my mom.

19 Q. Okay. So that's the very first time anybody
20 asked you if Mr. Chandler had done anything to you,
21 touched you, or anything like that, correct?

22 A. Yes.

23 Q. Sure about that?

24 A. Yes.

25 Q. Didn't your mother ask you repeatedly before
26 that if Mr. Chandler had done something to you?

27 MS. FILO: Objection, Your Honor, hearsay.

28 THE COURT: Sustained.

1 THE WITNESS: When my cousin --

2 THE COURT: Ms. A., um, I know the rules are
3 weird, but when I sustain the objection it means that
4 you don't answer. You're not doing anything wrong.
5 I'll jump in when I have to.

6 Go ahead.

7 MR. SCHUMB: All right.

8 BY MR. SCHUMB:

9 Q. Um, so you never discussed your -- did you,
10 did you discuss -- did any police officer ask you about
11 whether Mr. Chandler had done something to you prior to
12 you having your conversation with Noemi?

13 A. One time, yes.

14 Q. When was that?

15 A. When I went to the police department.

16 Q. How about before that?

17 A. Nothing.

18 Q. Didn't the police officer come to your school
19 and ask you questions?

20 A. He came to my cousin's.

21 Q. So a police officer didn't sit down with you
22 the day before you told your cousin and asked you a
23 bunch of questions about Mr. Chandler at school?

24 A. I went to the police department and told what
25 happened.

26 Q. You were never interviewed by any police
27 officer at school?

28 A. No.

1 Q. And so, um, how did it come up? How did you
2 bring it up to your, I think you call her, your cousin,
3 Mimi?

4 A. Yes.

5 Q. Where were you when you brought this up to
6 your cousin, Mimi?

7 A. I was in a house. They were -- my mom was
8 working. Um, there was -- I was -- they were, they
9 were always in the house.

10 Q. Okay.

11 A. Like --

12 Q. Whose house was it?

13 A. Um, I was.

14 Q. Was it a babysitter?

15 A. Yes.

16 Q. Was her name Golly?

17 A. Yeah.

18 Q. Is that how you say it?

19 A. Yes.

20 Q. Did I say it right, Golly?

21 A. Yes.

22 Q. So you were at Golly's house with Mimi?

23 A. Yes.

24 Q. Who brought it up?

25 A. She lived in the house and she had her mom in
26 the house.

27 Q. Okay. Mimi is your cousin, right?

28 A. Yes.

1 Q. Is Golly your aunt?
2 A. No.
3 Q. Golly's mother was in the house?
4 A. Yeah.
5 Q. And Golly was babysitting you guys?
6 A. The mom.
7 Q. The mom was, okay. Was Golly there when you
8 were talking about Mr. Chandler with Mimi?
9 A. Yes.
10 Q. Did she hear everything that you told Mimi?
11 MS. FILO: Objection, calls for speculation.
12 THE WITNESS: Yes.
13 MS. FILO: And discovery.
14 THE COURT: Um, sustained. The answer is
15 stricken.
16 BY MR. SCHUMB:
17 Q. Um, how close to Mimi was Golly when you were
18 talking about Mr. Chandler?
19 A. We were just sitting down.
20 Q. Okay. And Golly was sitting with you guys?
21 A. Yes.
22 Q. Was she joining into the conversation as you
23 were telling Mimi about Mr. Chandler?
24 A. Yes.
25 Q. Now, um, did you ever tell your mother -- um,
26 this is before you talked to Mimi -- that Mr. Chandler
27 had never touched you or done anything to you?
28 A. Yes.

1 Q. I thought you said you didn't discuss
2 Mr. Chandler with anyone prior to talking to Mimi.

3 A. Um, I told my cousin.

4 Q. Right, but I'm asking, did you ever tell your
5 mother before that, before you talked to Mimi that
6 Mr. Chandler had not done anything to you?

7 A. No.

8 Q. Did you tell your mother that Mr. Chandler was
9 a good man?

10 A. Yes.

11 Q. How did that come up?

12 MS. FILO: Objection, relevance.

13 THE COURT: Offer of proof please?

14 MR. SCHUMB: Um, in the mother's statement she
15 claims that she asked this witness a number of times
16 about Mr. Chandler and that one of the comments was
17 that he's a good man, mommy.

18 THE COURT: The objection is sustained.

19 BY MR. SCHUMB:

20 Q. Did you ever, um, tell your mommy, no, mommy,
21 he didn't do anything? He's a good person. Did you
22 ever tell her that before you told Mimi about what he
23 did to you?

24 A. No.

25 Q. How did your mommy find out that Mr. Chandler
26 was having a problem?

27 MS. FILO: Objection, calls for speculation.

28 THE COURT: Sustained. Ask your next question

1 please.

2 BY MR. SCHUMB:

3 Q. Were you there when your mommy saw something
4 about Mr. Chandler on T.V.?

5 A. Yes.

6 Q. Is that the first time your mommy said, oh, my
7 gosh, Mr. Chandler's in trouble.

8 MS. FILO: Objection, calls for speculation
9 and hearsay.

10 THE COURT: Sustained.

11 BY MR. SCHUMB:

12 Q. Did Mr., um --

13 THE COURT: This would be a good time for us
14 to take our mid-afternoon break.

15 Ms. A., we take a recess in the morning and a
16 recess in the afternoon. It's really hard to keep
17 working, especially hard for Ms. Nebolon that has the
18 hard job. I just listen. She works. So we take about
19 ten-minute breaks in the morning. This is our
20 ten-minute break for the afternoon. I'll tell you what
21 I tell everybody. You're not allowed to discuss what
22 you say on the stand with anyone. You can talk about
23 going to court, but not what you said on the stand.
24 Thank you.

25 We're in recess.

26 (A recess is taken.)

27 THE COURT: All right, Ms. A., you're in your
28 chair and I'm in mine so we're ready to start.

1 Go ahead please.

2 BY MR. SCHUMB:

3 Q. Thank you, Ms. A. Do you remember what we
4 were talking about when you were at Mimi's house?

5 A. Yes.

6 Q. When you were at Mimi's house, did Mimi ask
7 you questions or did you just decide to tell her what
8 happened with Mr. Chandler?

9 A. She asked me questions.

10 Q. And what questions was she asking?

11 A. Um, what happened questions.

12 Q. Okay. So, but she started the conversation
13 about Mr. Chandler. You didn't start it with her?

14 A. Um, I just told her. I told her. And she was
15 asking me questions.

16 Q. Okay. But what I want to know is, who said
17 the first thing about Mr. Chandler? Did she ask you
18 about Mr. Chandler or did you volunteer something to
19 her about Mr. Chandler?

20 A. I told her.

21 Q. What did you tell her?

22 A. What happened, um, that I was in a room and
23 what happened with Mr. Chandler.

24 Q. Okay. Did you tell her everything that
25 Mr. Chandler did to you?

26 A. No.

27 Q. Okay. Why didn't you tell her everything?

28 A. Because, um, I was scared that she will tell

1 my mom.

2 Q. You were scared that Mimi would tell your mom?

3 A. (Nods head.)

4 Q. Why were you scared that Mimi would tell your
5 mom?

6 A. Because my mom says that she needs to, we need
7 to tell her all the truth. And I was scared.

8 Q. So you were scared to tell Mimi because Mimi
9 would tell your mom and your mom had told you to tell
10 the truth?

11 Is that a "yes"?

12 A. Yes.

13 Q. So why did that scare you?

14 A. Because my mom said we are always to tell the
15 truth.

16 Q. When didn't you tell the truth?

17 A. Mimi told her.

18 Q. I know. Why would your mom be mad at you?
19 Were you not telling the truth?

20 A. No, because I didn't tell her.

21 Q. Didn't tell who? Your mom?

22 A. Yeah.

23 Q. So you were afraid to tell Mimi because Mimi
24 would tell your mom and then your mom would be mad at
25 you for not telling your mom. Is that what you're
26 trying to say?

27 A. Yes.

28 Q. Okay. Um, so you definitely told Mimi first,

1 right?

2 A. Yes.

3 Q. Okay. And, um, so I thought, didn't you
4 tell -- now, when you were talking to a police officer,
5 did you feel safe to tell them the truth?

6 A. Yes.

7 Q. Okay. So when it came to telling the truth,
8 you have no problem telling the truth about
9 Mr. Chandler to any police officer, right?

10 A. Yes.

11 Q. Okay. But you were a little nervous about
12 telling your mom?

13 A. Yeah.

14 Q. Why were you nervous about telling your mom?

15 A. Because it will come here, and I'll be
16 nervous.

17 Q. Okay. So you were afraid you were going to
18 have to come testify here in court?

19 A. No, that the police, I will go to the police
20 department and tell them what happened.

21 Q. Okay. But I thought you said you weren't
22 nervous about that.

23 A. At first I told her, told her, and then I was
24 nervous, but then when I went, um, the police
25 department started telling me questions.

26 Q. Isn't it true that you didn't tell your mother
27 because nothing really bad happened?

28 MS. FILO: Objection, asked and answered.

1 THE COURT: Sustained.

2 That means you don't answer.

3 Go ahead. Ask your next question.

4 BY MR. SCHUMB:

5 Q. So why did you tell Mimi?

6 A. So she would tell anyone that was there.

7 Q. No, no. Why did you decide -- was there
8 something that happened that day that made you want to
9 tell Mimi?

10 A. Yes.

11 Q. What was that?

12 A. That I told her and then I decided to tell her.

13 Q. You told her and then you decided to tell
14 her?

15 A. I did tell her.

16 Q. You did tell Mimi everything?

17 A. (Shakes head.)

18 Q. Why did you decide to tell Mimi that day? You
19 said you were nervous that Mimi would tell your mother,
20 right?

21 A. Yes.

22 Q. Why did you decide to tell her?

23 A. Because she was the only one there right now.

24 Q. Why did you need to tell somebody right now?

25 A. Because I saw what he did. Um, it was bad.

26 Q. You saw what he did and it was bad? When did
27 you see what he did and it was bad?

28 A. Um, um, in the school they gave us a paper and

1 I gave it to Mimi. And she told me something happened,
2 if I was, if that happened, and I told her yes.
3 Q. You told that to your mommy?
4 A. No. I didn't tell her.
5 Q. Pardon me?
6 A. Mimi told my mom.
7 Q. Okay. There was paper that you brought home
8 from school?
9 A. Yes.
10 Q. And gave it to your mother?
11 A. Yes.
12 Q. And then your mother, did she talk to you
13 about the paper?
14 A. Yes.
15 Q. What did she ask you?
16 A. If, if, if, if he did that.
17 Q. And did you tell your mother?
18 A. I told her. I kept on telling her what
19 happened.
20 Q. So when you brought home the paper to your
21 mother that talked about what Mr. Chandler had done,
22 or, allegedly done, that's when you told your mother
23 about what Mr. Chandler had done to you? You told her
24 the truth?
25 A. Yes.
26 Q. Was that before or after you told Mimi?
27 A. After.
28 Q. Okay. So we were trying to figure out why you

1 told Mimi that day. Was there something that happened
2 that day that made you tell Mimi?
3 A. Yes.
4 Q. What was it?
5 A. It was that day they gave me the paper.
6 Q. Did you show it to Mimi? Did you show the
7 paper to Mimi?
8 A. Yes.
9 Q. And did Mimi ask a bunch of questions about
10 it?
11 A. Some, yes.
12 Q. Is that how the conversation started?
13 A. Yes.
14 MS. FILO: Objection, Your Honor, asked and
15 answered.
16 THE COURT: Overruled.
17 BY MR. SCHUMB:
18 Q. So did Mimi ask you about what Mr. Chandler
19 had done to you?
20 A. Yes.
21 Q. Did Mimi, um, did Mimi, um, ask you about --
22 um, did she ask you to draw a picture for her?
23 A. No.
24 Q. Did you draw a picture for Mimi?
25 A. No.
26 Q. You sure?
27 A. Yes.
28 Q. You drew a picture today, right?

1 A. Yes.
2 Q. And you drew a picture for the police officer,
3 right?
4 A. Yes.
5 Q. Did you draw a picture for Mimi?
6 A. No.
7 Q. Did Mimi draw a picture for you?
8 A. No.
9 Q. Did you tell Mimi that, um, Mr. Chandler, um,
10 gave you something that tasted like pee?
11 A. Yes.
12 Q. What was that?
13 A. Liquid.
14 Q. Was it a drink that he gave you?
15 A. Yes.
16 Q. Did, um, did he -- how many times did he give
17 you that drink?
18 A. Three or more times.
19 Q. Was it always the same drink?
20 A. It was --
21 Q. He had it on a bottle on his table. I think
22 you saw when you walked in the classroom?
23 MS. FILO: Objection, assumes facts not in
24 evidence, speculation.
25 THE COURT: Sustained.
26 MR. SCHUMB: Your Honor, there are references
27 to this in the police reports and the witness
28 statements.

1 THE COURT: I don't have the evidence of
2 that. Please ask your next question.
3 BY MR. SCHUMB:
4 Q. Um, did Mr. Chandler pour the liquid into your
5 mouth?
6 A. Um, no.
7 Q. When you had the blindfold on?
8 A. I had the blindfold on. I had the thing in my
9 mouth, but he didn't take it out.
10 Q. Okay. Didn't he pour a liquid into your
11 mouth?
12 MS. FILO: Objection, asked and answered.
13 THE COURT: Overruled.
14 Did you understand the question, Ms. A.?
15 THE WITNESS: No.
16 THE COURT: Ask it again.
17 BY MR. SCHUMB:
18 Q. When you had the blindfold on, did he ever
19 have you put your head up and give you a little bit of
20 liquid to try some?
21 A. No.
22 Q. Never?
23 A. Just one time.
24 Q. Just one time, okay. Was that kind of a salty
25 liquid? Was it the sweet one? I think he had sugar
26 and salt water?
27 MS. FILO: Objection, assumes facts not in
28 evidence.

1 BY MR. SCHUMB:

2 Q. Was it a salty taste or sweet taste or --

3 A. Sweet.

4 Q. Sweet taste. Kind of like sugar water?

5 A. Yes.

6 Q. Okay. Did you guess that that's what it was?

7 A. Yes.

8 Q. Did you get it right? No? You don't
9 remember?

10 A. I don't remember.

11 Q. Okay. Um, I think you don't you recall that,
12 when you came in the room that day, you saw a bottle on
13 his desk?

14 A. Yes.

15 MS. FILO: Objection, Your Honor, improper
16 question. There's no foundation. There's no lack of
17 recollection.

18 THE COURT: What's the legal basis for the
19 objection?

20 MS. FILO: Um, I just lost my own train of
21 thought. Um, what was the question?

22 THE COURT: Go ahead.

23 (The requested record is read.)

24 MS. FILO: There's no foundation. That was
25 the objection.

26 THE COURT: Just a moment. That doesn't tell
27 me much. What was the question?

28 (The requested record is read.)

1 THE COURT: What's the legal objection?
2 MS. FILO: No foundation.
3 THE COURT: Do you mean assuming facts not in
4 evidence?
5 MS. FILO: Yes.
6 THE COURT: Okay.
7 MS. FILO: Sorry.
8 THE COURT: "No foundation" doesn't tell me
9 much. Sustained. Ask your next question please.
10 MR. SCHUMB: Your Honor, how could I --
11 THE COURT: You can ask an open-ended question
12 about whether or not she saw it, rather than assuming
13 she saw it.
14 BY MR. SCHUMB:
15 Q. Did you see anything on Mr. Chandler's desk
16 that day that looked like a bottle?
17 MS. FILO: Objection, vague as to time.
18 THE WITNESS: Yeah, I saw.
19 BY MR. SCHUMB:
20 Q. And then did you have the blindfold on or off
21 when he gave you that liquid?
22 A. On.
23 Q. You sure?
24 A. Yes.
25 Q. Okay, all right. Um, could you feel like kind
26 of the edge of the bottle on your mouth or did you just
27 feel the liquid come in?
28 A. Liquid coming in.

1 Q. All right. And, um, did you -- one time you
2 didn't like it and you kind of spit it out, right?
3 A. Yeah.
4 Q. What did the liquid get on?
5 A. My mouth.
6 Q. When you spit it out, where did it go?
7 A. The floor.
8 Q. On the floor? Did it get on you at all?
9 A. Yeah, a little.
10 Q. Did it get on your pants or your shirt or
11 something?
12 A. Yeah.
13 Q. I think you told the, um, police officer about
14 that a little bit. I think you were trying to describe
15 that when you talked to one of the police officers?
16 A. Yes.
17 Q. Now, you said, um, did -- were the lights
18 always on when you were playing the game in
19 Mr. Chandler's room?
20 A. Yes.
21 MR. SCHUMB: May I just have one minute, Your
22 Honor?
23 THE COURT: Of course.
24 BY MR. SCHUMB:
25 Q. Um, Ms. A., let me ask you something. If you
26 look at Exhibit A here, which is the big picture, is
27 the area where you claim that Mr. Chandler pushed you,
28 is that shown here?

1 A. No.

2 Q. Okay. Let me get you another Post-it and see
3 if it's there, okay?

4 THE COURT: This is B.

5 (Defendant's Exhibit B is marked.)

6 BY MR. SCHUMB:

7 Q. Ms. A., let me ask you, um, have you ever seen
8 Exhibit B before? Move around the room here.

9 A. Yes.

10 Q. Okay. Um, is that a "yes"?

11 A. Yes.

12 Q. Okay. This shows a little bit more of the
13 floor by Mr. Chandler's desk, right?

14 A. Yes.

15 Q. Does that show the area where Mr. Chandler was
16 pushing you --

17 A. Yes.

18 Q. -- when you were on your hands and knees? I
19 just took a sticky and wrote "Ms. A." on it. If I
20 bring the picture over to you, can you put the sticky
21 where you say Mr. Chandler was.

22 You've got to give me verbal. Can you just
23 say "yes" or "no" whether you can do that? Can you do
24 that for me? "Yes" or "no"?

25 A. Yes.

26 THE COURT: Ms. A. has placed the sticker at
27 the bottom part of the photograph, just to the left of
28 center, um, between what the photo depicts as the

1 teacher's desk and what appears to be a red or maroon
2 bucket or wastebasket of some kind. Go ahead.

3 MR. SCHUMB: Thank you, Your Honor.

4 BY MR. SCHUMB:

5 Q. Ms. A., You said that Mr. Chandler was pushing
6 you with this ball between, I guess, you and him; is
7 that correct?

8 A. Yes.

9 Q. Did you see him take the ball out? I think
10 the balls are stored over here? Where are the balls
11 stored in the room?

12 A. In the red.

13 Q. Oh, in the red bucket right here on Exhibit B?

14 A. Yeah.

15 Q. He took a ball out of the red bucket?

16 A. Yes.

17 Q. You saw him do that?

18 A. The red thing. He had a ball in the red
19 thing.

20 Q. And then he had you get on the floor on your
21 hands and knees. And was that before -- had you also
22 done the taste test thing that day with the candy or
23 the thing?

24 A. Yes.

25 Q. Okay. And then he -- then what happened after
26 the end of the taste test?

27 A. We were done.

28 Q. Okay. Did you leave the room?

1 A. Yeah.

2 Q. Okay. If you left the room, then I guess you

3 couldn't have done the thing on the floor. Did that

4 not happen?

5 A. No. First we -- the classroom was there.

6 Q. Everybody was in the classroom?

7 A. Yeah.

8 Q. He did this in front of the whole class?

9 A. No. We were, like when he, one time he did

10 the taste one time in front of the classroom.

11 Q. One time he did the taste in front of the

12 whole class? With you?

13 A. He was calling some students to taste and

14 guess.

15 Q. Oh, okay. Okay. Okay. So there was another

16 time when he did the, um, I call it the Helen Keller

17 taste test or whatever. But he did the taste test in

18 front of the whole classroom and you saw that?

19 A. Yeah.

20 Q. Okay. Was that the time when he pushed you --

21 A. No.

22 Q. -- from behind?

23 A. No.

24 Q. So I was asking how was it he came to push you

25 like you testified. How did that happen?

26 A. He told me to go down.

27 Q. Okay. And where were you at the time he told

28 you to do that?

1 A. On the floor.
2 Q. Were you already on the floor?
3 A. Yeah.
4 Q. Okay. How did you -- how did you get on the
5 floor ?
6 A. He told me.
7 Q. Where were you before he told you to get on
8 the floor?
9 A. Up.
10 Q. Up where?
11 A. Standing up.
12 Q. You were standing up?
13 A. (Nods head.)
14 Q. Had you just come into the room?
15 A. Yes.
16 Q. Okay. What were you doing before that?
17 A. He had a ball.
18 Q. Okay. Had you just come in from the yard?
19 Had you just come in from outside playing?
20 A. No. We didn't -- then he got a ball.
21 Q. Okay. What I want to know is, where were you
22 just before you got the ball.
23 A. Down on the floor.
24 Q. Okay, I'm going before that. Before you got
25 on the floor, before you got the ball, you said you
26 were standing there, right?
27 A. Yes.
28 Q. Okay. What were you doing just immediately

1 before that? Had you been outside?

2 A. Yes, I was outside. I was in the classroom.

3 Q. You were already in the classroom, okay.

4 Where were you in the classroom?

5 A. Where I just, right there on the floor I was
6 standing up and then he told me to go down and I went
7 down.

8 Q. Do you really remember the pushing thing
9 happening or do you mean it didn't happen?

10 MS. FILO: Objection, Your Honor,
11 argumentative and asked and answered.

12 THE COURT: Sustained. Please rephrase.
13 BY MR. SCHUMB:

14 Q. Do you remember when this pushing incident,
15 Mr. Chandler supposedly pushed you? Was it before
16 Christmas? Was it before --

17 A. No.

18 Q. You don't remember. Um, what time of day was
19 it?

20 A. At recess.

21 Q. Which recess?

22 A. Um, recess.

23 Q. The lunch recess or the little recess?

24 A. Recess, the little recess.

25 Q. Okay. Are you sure about that?

26 A. Um, our recess, the classroom was -- we were
27 inside. He told me that at recess I need to come to
28 the room.

1 Q. He told you that? He didn't send somebody
2 else to bring you in?

3 A. No.

4 Q. So then you came into the room at that
5 recess. This is on the day that he did the pushing,
6 right?

7 A. Yes.

8 Q. That's what we're talking about, right?

9 A. Yes.

10 Q. Then what happened?

11 A. Then I went to go play.

12 Q. So you went out to go play at recess. Then
13 did you come back into the room and then he pushed you?

14 A. No. Um, first I was in the classroom. And
15 then he told me that at recess, our recess, I need to
16 go to the room.

17 Q. Okay.

18 THE COURT: Just a moment.

19 Ms. A., um, the rules say that I can postpone
20 your testimony until tomorrow morning if you're getting
21 tired, but if you want to keep going, we can do that
22 too. Would you like to keep going or would you like to
23 come back in the morning?

24 THE WITNESS: Um, come back in the morning.

25 THE COURT: All right.

26 MR. SCHUMB: I don't have --

27 THE COURT: Penal Code Section 861.5.5 that
28 the magistrate may postpone the preliminary examination

1 for one court day in order to accommodate the special
2 physical, mental, or emotional needs of a child witness
3 who is ten years of age or younger or a dependent
4 person.

5 This child is 9 years of age, and that's what
6 I'm going to do.

7 You're ordered to come back tomorrow morning
8 at 9.

9 Now, the magistrate shall admonish both the
10 prosecutor and defense against coaching the witness
11 prior to the witness' next appearance in the
12 preliminary examination. I'm doing that too.

13 Um, is there an adult witness we can take out
14 of order to fill the rest of the day?

15 MS. FILO: Yes.

16 THE COURT: Let's do that.

17 Ms. A., we'll see you in the morning.

18 Remember not to discuss what you said on the stand with
19 anyone.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 MS. FILO: Your Honor, can I just have a
23 minute to coordinate the next witness?

24 THE COURT: Sure.

25 MS. FILO: Your Honor, the People call
26 Ms. Peery.

27 THE COURT: Thank you. Please step forward,
28 ma'am.

1 COURT CLERK: Raise your right hand please.

2 LEA PEERY:

3 COURT CLERK: Do you solemnly state under
4 penalty of perjury that the evidence you shall give in
5 this matter shall be the truth, the whole truth, and
6 nothing but the truth?

7 THE WITNESS: I do.

8 COURT CLERK: Thank you. Please have a seat.

9 Would you please state and spell your full
10 name for the record.

11 THE WITNESS: Lea Peery, first name L-E-A.
12 Last name Peery, P-E-E-R-Y.

13 THE COURT: Thank you, Ms. Peery. Um, the
14 attorneys will ask you questions and I may have some
15 questions. If you don't you understand a question,
16 it's absolutely all right to say, I don't understand,
17 ask it again, ask it a different way.

18 Um, the court reporter is taking down every
19 word we say and we can make her job easier by speaking
20 slowly and only one person at a time. Thank you.

21 Go ahead please.

22 MS. FILO: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. FILO:

25 Q. Um, Ms. Peery, how are you presently employed?

26 A. What is my job title?

27 Q. Sure.

28 A. Assistant Principal at O.B. Whaeley.

1 Q. That is in the City of San Jose, County of
2 Santa Clara?
3 A. Yes.
4 Q. And it is an elementary school?
5 A. Yes.
6 Q. How long have you been employed in an
7 administrative capacity at O.B. Whaeley?
8 A. Three years.
9 Q. Ms. Peery, um, I want to ask you about January
10 9th, 2012. Do you remember that day?
11 A. Yes.
12 Q. Did something unusual happen on the morning of
13 that day?
14 A. Yes.
15 Q. What happened?
16 A. A parent came into the office with a concern
17 and, um, went through some, some incidents that had
18 occurred to her child. And, um, I had to notify the
19 district and follow through with procedures that I
20 needed to deal with.
21 Q. Okay. Ms. Peery, um, was that parent's name
22 Luisana Villarreal?
23 A. Yes.
24 Q. What time did Ms. Villarreal come into the
25 office at O.B. Whaeley?
26 A. 8:40.
27 Q. What was her demeanor?
28 A. She was very emotional. She was crying.

1 Q. Was anyone with her or was she by herself?

2 A. She was alone.

3 Q. Did you -- where did you -- where did you have
4 a conversation with Ms. Villarreal to figure out the
5 source of her distress?

6 A. So she came into the office and then I brought
7 her into, um, the principal's office, Ms. V.'S office.
8 Then she started telling me what happened so then I
9 told her to sit down and close the door.

10 Q. How long did you speak with Ms. Villarreal
11 that morning?

12 A. I spoke to her alone for about, um, five to
13 ten minutes about it.

14 Q. What did you do after Ms. Villarreal left your
15 office?

16 A. I called the district office and spoke to, um,
17 Carol Schmidt.

18 Q. What was the, um, general substance of what
19 Ms. Villarreal told you?

20 A. That she was not -- her daughter did not want
21 to come to school that morning. She was scared to come
22 to school because of some things that happened in the
23 classroom.

24 Q. Did she identify the teacher of the classroom?

25 A. Yes.

26 Q. Who was that?

27 A. Craig Chandler.

28 Q. You said that you then called the district.

1 Did you speak with Mr. Chandler?
2 A. Not at that time, no.
3 Q. At any point that morning, did you speak with
4 Mr. Chandler?
5 A. Yes.
6 Q. When?
7 A. After, um, I spoke with Ms. Villarreal and her
8 daughter. At that point, I called the district with
9 what happened. And it was about 9:30, approximately
10 9:30.
11 Q. Um, did you tell Mr. Chandler that a parent
12 had raised some concerns about something happening in
13 his classroom?
14 A. I believe that I called him to come to the
15 office and Mr. Lara, who was the Acting Assistant
16 Principal at that time, went over to cover his class
17 and then he came over. It was about closer to 10 when
18 he came over.
19 Q. And did you tell Mr. Chandler that concerns
20 had been raised about something happening in his
21 classroom?
22 A. Yes.
23 MR. CLARK: Objection, hearsay.
24 THE COURT: Overruled.
25 BY MS. FILO:
26 Q. Did you tell Mr. Chandler the nature of the
27 allegation?
28 A. I explained that there was a parent that had

1 some concerns.

2 Q. Did you explain the nature of the concerns?

3 A. No.

4 Q. Did you give Mr. Chandler any instruction, um,
5 about what to do upon hearing those concerns?

6 A. I told him to go to his classroom and get me a
7 lesson plan.

8 Q. Were the -- the children were in the classroom
9 at that time; is that right?

10 A. Yes.

11 Q. You told him to go get a lesson plan. Did
12 he -- um, what was to happen after that?

13 A. I told him I was going to call the parent
14 after speaking with him and that we would set up a
15 meeting to go over her concerns.

16 Q. And did Mr. Chandler leave at that point?

17 A. Yes.

18 Q. What was your next interaction with
19 Mr. Chandler that day?

20 A. He came back with the lesson plan at 10:30,
21 around 10:30 after recess and then, um, he asked if I
22 had gotten in contact with the mother, which I hadn't
23 at that time. She hadn't returned my call yet so I
24 told him to just go back to class and I would notify
25 him once I knew when we would have our meeting.

26 Q. Let me back you up for one second. You said
27 you thought Mr. Chandler came to the office at around
28 10:30 A.M.

1 A. Yes.

2 Q. How long did you speak with Mr. Chandler that
3 morning at that 10:30 A.M. time?

4 A. About six, seven minutes, not that long.

5 Q. And you believe that he then returned to your
6 office with a lesson plan approximately 20 minutes
7 later; is that right?

8 A. Yes.

9 Q. What did the lesson plan look like?

10 A. It was, um, a handwritten note, um, looked
11 like on, you know, paper.

12 Q. What was the next interaction you had with
13 Mr. Chandler that day after receiving this lesson plan
14 at approximately 10:30 in the morning?

15 A. He went back to class and then I did not talk
16 to him again until he called me from the room again
17 asking -- I'll take that back. He called from his room
18 asking if I had contacted the mother and I said not
19 yet. Then the next time he came into the office, it
20 was maybe 11:45, yeah.

21 Q. And at 11:45, did you have a substantive
22 discussion with Mr. Chandler?

23 A. Yes.

24 Q. Um, was anyone else present for that
25 discussion?

26 A. No.

27 Q. Were you -- um, did you tell Mr. Chandler at
28 any point -- um, take that back. At what point did you

1 become aware that the police had been contacted?

2 A. The third phone call I made to Ms. Villarreal,
3 she answered the phone and she said -- I told her I
4 wanted to set up the appointment. And she said I have
5 notified authorities already and I told her, perfect,
6 bring them down with you and we could have the
7 meeting. And so that was the next step. That was
8 about a little close to noon.

9 Q. When you met with Mr. Chandler at 11:45, um,
10 do you know whether or not the authorities had already
11 been contacted?

12 A. I had Mr. Lara go over once I found out the
13 authorities were contacted and he went and relieved
14 Mr. Chandler from his class. He came over and I sat
15 him down and I told him at that point, noon.

16 Q. You told Mr. Chandler that the police had been
17 contacted?

18 A. Yes.

19 Q. Um, to the best of your knowledge from that
20 point forward, did Mr. Chandler ever return to his
21 classroom?

22 A. Yes.

23 Q. When was that?

24 A. He returned to his classroom pretty shortly
25 after our conversation, um, for -- and I don't know for
26 how long because their lunch starts at 12:00 and the
27 students were being watched, but he did go back to his
28 classroom.

1 Q. What was your next interaction with
2 Mr. Chandler that day?

3 A. It was about, he took his lunch and then he
4 came back after and then he stayed in my office and was
5 waiting, um, to see if they were going to show up, the
6 police were going to show up.

7 Q. Did anyone from the district come to the
8 school?

9 A. I had Mr. Chandler contact our union rep,
10 Brian Wheatley, and he came to the school. I don't
11 know exactly what time, but he was there in the
12 afternoon.

13 Q. You said that Mr. Chandler was waiting in your
14 office or waiting in the principal's office for the
15 police to arrive. Um, did the police make it over to
16 the school?

17 A. No, they did not.

18 Q. Did Mr. Chandler return to his classroom?

19 A. I believe he went to his classroom.

20 Q. Did he finish out the day there?

21 A. No.

22 Q. What happened? Why not?

23 A. He said he was not feeling that he could go
24 back to class, so I had Mr. Lara remain with his
25 students for the remainder of the day as well as
26 another assistant stay with his students. And he was
27 there either in my front office, Lynn's office. I
28 believe he went to the staff room for a little bit, but

1 he also had his union rep with him for the latter part
2 of the afternoon before the kids were excused.

3 Q. What about when the kids were excused? Do you
4 know whether or not Mr. Chandler left the campus,
5 stayed on the campus? Do you have any idea what he did
6 for the rest of the day?

7 A. I don't know exactly what he did the rest of
8 the day.

9 MS. FILO: Your Honor, can I just have a
10 minute please?

11 THE COURT: Of course.

12 MS. FILO: Thank you.

13 BY MS. FILO:

14 Q. Ms. Peery, did, um, did you ever -- did any
15 authority from the school, you or anyone else in your
16 presence, ever tell Mr. Chandler not to return to his
17 classroom after he left that day?

18 A. So after he left work that day?

19 Q. Correct.

20 A. Not to return the next day?

21 Q. Correct.

22 A. I did not say for him not to return to work
23 the next day.

24 MS. FILO: Okay, that's all the questions I
25 have. Thank you, Your Honor.

26 THE COURT: Cross exam?

27 MR. CLARK: Thank you.

28 \\\

CROSS EXAMINATION

BY MR. CLARK:

Q. Ms. Peery, my name is Mr. Clark. I'm going to ask you some questions. If you don't understand, just let me know that and I'll rephrase it, okay? Is that okay?

A. Okay.

Q. And if you do answer my question, I'll assume you understood it, okay?

A. Okay.

Q. So what I want to -- do you know Mr. Chandler on any kind of personal basis, other than as a work colleague?

A. No.

Q. But you've been his assistant principal for three years; is that correct?

A. This is my third year.

Q. What are your duties as assistant principal?

A. To be an instructional leader, to monitor, discipline, to support the teachers. I set the duties. I'm 50 percent project specialist and 50 percent assistant principal.

Q. Okay. Now, I want to ask you a question. Ms. Villarreal, you said, came to school. What time did she come to school on January 9th?

A. Approximately 8:40.

Q. And you picked the number 8:40. Did you review any documents prior to coming here today?

1 A. I reviewed my own personal memory pretty much,
2 my notes in my head.

3 Q. Okay. That's not exactly a document. Did you
4 look at any documents?

5 A. No.

6 Q. Did you look at the C.P.S. reports?

7 A. No.

8 Q. Did you make a C.P.S. report?

9 A. Yes.

10 Q. When did you make the C.P.S. report in
11 relation to Mrs. Villarreal coming to school?

12 A. It was later that day.

13 Q. So it was the same day?

14 A. Hm-hmm.

15 Q. Could you please answer "yes" or "no"?

16 A. Yes.

17 Q. Thank you. Um, have you ever reviewed your
18 C.P.S. report prior to your testimony today?

19 A. No.

20 Q. Um, did you make any verbal C.P.S. reports or
21 was your C.P.S. report in writing?

22 A. It was in writing.

23 Q. And did you instruct other members of the
24 staff, the O.B. Whaeley staff, to also file C.P.S.
25 reports?

26 MS. FILO: Objection, Your Honor, relevance.

27 THE COURT: Offer of proof please?

28 MR. CLARK: I'm trying to figure out when this

1 C.P.S. was report was made.

2 BY MR. CLARK:

3 Q. Did you instruct other people to do that?

4 A. No.

5 MS. FILO: My objection remains. What's the
6 relevancy?

7 THE COURT: Can I have an offer of proof
8 regarding relevancy?

9 MR. SCHUMB: Withdraw it.

10 BY MR. CLARK:

11 Q. You said when Ms. Villarreal came to school,
12 she was, what was the word you used?

13 A. Emotional.

14 Q. Have you ever met Ms. Villarreal before?

15 A. Yes.

16 Q. Okay. And on the times that you met -- what
17 were your interactions like with her when you met her
18 on previous occasions?

19 A. Just she was a very supportive, how would I
20 say? She supported the school in many ways. I worked
21 with her son. Um, she was, uh, just an average parent
22 that walked her kids to class. Nothing unusual.

23 Q. Was she someone that complained a lot about
24 your school?

25 A. No.

26 Q. Um, did -- when she first came to you, did you
27 say the words -- when she said something that happened,
28 did you say the words, oh, no, not again?

1 A. No.
2 Q. You never used those words?
3 A. No.
4 Q. Did you ever use those words with
5 Ms. Villarreal?
6 A. No.
7 Q. To your knowledge, has Ms. Villarreal brought
8 a claim against the school?
9 A. Not to my knowledge.
10 MS. FILO: Objection, calls for speculation.
11 MR. CLARK: I asked for knowledge.
12 THE COURT: Overruled. I'll let the answer
13 stand. What's your next question please.
14 BY MR. CLARK:
15 Q. In the five minutes you spent with her, what
16 did she say happened? What was her emotional state, if
17 you know?
18 A. That her daughter did not want to come to
19 school. She was scared to come to school.
20 Q. Did you make notes of that encounter with her?
21 MS. FILO: Objection, discovery.
22 THE COURT: Sustained.
23 BY MR. CLARK:
24 Q. Let me just approach and I will just show you
25 a C.P.S. report with an attachment. I want to see if
26 this is your report, okay?
27 MS. FILO: I'm sorry, I haven't seen it.
28 \\\

1 BY MR. CLARK:

2 Q. This is a three-page document which is a
3 suspected child abuse report. In the first, on page 2
4 is the date and time January 9th at 8:40. Do you
5 recognize this document?

6 MS. FILO: I'm going to object showing the
7 document unless there's some question pending or some
8 relevance to the document.

9 THE COURT: Offer of proof please?

10 MR. CLARK: Yes. The document contains, um, a
11 typewritten statement with questions and answers
12 relative to what we've been talking about. And the
13 first note of that is January 9th, 8:40. She's the one
14 that said she had the meeting. That's why I'm asking
15 to refresh her memory.

16 THE COURT: She hasn't testified that she
17 doesn't remember. Here's the way it works: If a
18 witness has said, I don't remember, absolutely anything
19 can be shown to refresh his or her recollection. When
20 something comes in, it means the witness looks at the
21 document for as long as he or she wants to refresh her
22 memory, fine. If it doesn't, fine. That's when we go
23 to the statement of the witness and not the contents of
24 the document. Go ahead please.

25 MR. CLARK: Okay.

26 BY MR. CLARK:

27 Q. Who did you speak with at the district office
28 right after this conversation?

1 A. Carol Schmidt.
2 Q. What is her title?
3 A. Director of Human Resources.
4 Q. And did you, um, tell Ms. Villarreal to go get
5 Ms. I.?
6 A. Yes.
7 Q. When did you tell her that?
8 A. After I met with her in the morning.
9 Q. And did she bring I. back to school?
10 THE COURT: Can we use the child's first
11 initial.
12 BY MR. CLARK:
13 Q. Did you bring Ms. I. back to school?
14 A. Yes.
15 Q. Did you question Ms. I.?
16 A. I questioned Ms. I. with two other people in
17 the room.
18 Q. What did Ms. I. tell you happened to her?
19 A. She said that Mr. Chandler put a scarf over
20 her eyes and put things in her mouth.
21 Q. Did she tell you what was put in her mouth?
22 A. No.
23 Q. Did she describe what was put in her mouth?
24 A. Yes.
25 Q. What did she describe? What did she say?
26 A. She said it was -- I can't -- let me think
27 about this. She said it was, um, big, I believe, and
28 hard..

1 Q. And are you saying this from memory? You're
2 remembering this now from what occurred in January or
3 did you make notes of that statement?

4 A. I filed a report.

5 Q. Do you believe you need to look at the report
6 to assist you in what may have been said to you?

7 A. No.

8 Q. Okay. Um, so it was big and hard. Did she
9 say that anything else was put in her mouth?

10 A. No.

11 Q. Did she say it happened one time or more than
12 one time?

13 A. When she -- when we first had the first
14 interview with myself and Mr. Lara, she said it
15 happened once.

16 Q. Now, what time did that -- who's Mr. Lara?
17 Who was he? And how do you spell his last name?

18 A. He spells his name L-A-R-A, Lara. And he is
19 the Acting Assistant Principal.

20 Q. And did you also have the school psychologist
21 present during this meeting?

22 A. She came in the middle of that meeting.

23 Q. Did you request that?

24 A. I wanted her, I wanted a psychologist and
25 someone else in there, if I could.

26 Q. Um, did you -- did Ms. Villarreal tell you
27 that she felt that the school psychologist was not
28 responsive to her?

1 MS. FILO: Objection, calls for hearsay.

2 THE WITNESS: No.

3 BY MR. CLARK:

4 Q. Was the school psychologist responsive to
5 Ms. Villarreal that you observed?

6 A. No.

7 Q. What do you mean by that, no, she wasn't?

8 A. She sat there as a witness and listened to ...

9 Q. Let me try a different word. Was she
10 dismissive of Ms. Villarreal?

11 A. No.

12 Q. Was she concerned about what Ms. Villarreal
13 was saying?

14 MS. FILO: Objection, calls for speculation.

15 THE COURT: Sustained.

16 BY MR. CLARK:

17 Q. Did she appear to be concerned about what
18 Ms. Villarreal was saying?

19 A. Yes.

20 Q. So if Ms. Villarreal characterized the
21 psychologist as putting her hand on her cheek and
22 basically being dismissive, that would be inaccurate of
23 what you observed?

24 MS. FILO: Objection.

25 THE COURT: What's the legal basis for the
26 objection?

27 MS. FILO: It's outside of this witness'
28 knowledge.

1 THE COURT: You mean speculation?

2 MS. FILO: Yes.

3 THE COURT: Sustained.

4 BY MR. CLARK:

5 Q. Did the psychologist, during the meeting, sit
6 there with her cheek on her arm, like I'm sitting now,
7 and appear to be dismissive or not interested in what
8 Ms. Villarreal was saying?

9 A. No.

10 Q. Now, when you said that you wanted to go talk
11 to Mr. Chandler, you told him to get his lesson plan.
12 You did that, correct? You told Mr. Chandler to go get
13 his lesson plan?

14 A. I asked him if he could tell me why he did,
15 what he said the lesson was, and I said can you please
16 get your lesson plan.

17 Q. Um, did your conversation with Mr. Chandler
18 take place after the meeting where I told you what
19 occurred?

20 A. Yes.

21 Q. So you asked for his side of it?

22 A. Yes.

23 Q. Did he produce a lesson plan?

24 A. He gave me a note, a paper like this with
25 notes on it.

26 Q. And what did the note say?

27 A. Just the nature of what he did.

28 Q. What was it?

1 A. It looked like --
2 MS. FILO: Objection, Your Honor, hearsay.
3 THE COURT: Sustained.
4 BY MR. CLARK:
5 Q. Did you ever notify the authorities?
6 A. I was in the process of it when I called
7 Ms. Villarreal. She had already done it.
8 Q. Okay.
9 MR. CLARK: May I have a minute, Your Honor?
10 THE COURT: Of course.
11 BY MR. CLARK:
12 Q. Um, just real quick. Mr. Chandler stayed at
13 the school while this was going on, while you were --
14 maybe that wasn't a very good question. You had a
15 conversation with Mr. Chandler and said, go get your
16 lesson plan. And when did he return after you asked
17 him to do that? How long did it take him?
18 A. About half an hour.
19 Q. Um, did you then have further conversations
20 with Mr. Chandler after that?
21 A. Yes.
22 Q. Did you tell him to leave school?
23 A. No.
24 Q. Um, you did advise him, though, that he had
25 the right to have a union rep.
26 A. Yes.
27 Q. And that's a common -- that's true, right, any
28 time a teacher's questioned?

1 A. Yes.

2 MS. FILO: Objection, Your Honor, calls for
3 expert opinion.

4 THE COURT: Overruled.

5 BY MR. CLARK:

6 Q. Um, did Ms. I., to your knowledge, have any
7 issues, um, healthwise where she was making complaints
8 of any kind of health issues to the school staff, to
9 your knowledge?

10 A. No.

11 Q. Did she have an issue with being tardy or
12 absent?

13 A. No.

14 MR. CLARK: Nothing further.

15 THE COURT: Redirect?

16 MS. FILO: No. Thank you, Your Honor.

17 THE COURT: All right. Is this witness
18 excused or would either side like her to remain on
19 phone standby?

20 MS. FILO: She's excused.

21 MR. CLARK: She's excused.

22 THE COURT: Thank you very much, Ms. Peery.
23 I'll tell you what I tell everyone. You are not
24 allowed to discuss your testimony with anyone. You can
25 talk about coming to court, but not about what you said
26 on the stand. Thank you very much.

27 MS. FILO: The People call Lyn Vijayendran.

28 COURT CLERK: Raise your right hand please.

1 LYN VIJAYENDRAN:

2 COURT CLERK: Do you solemnly state under
3 penalty of perjury that the evidence you shall give in
4 this matter shall be the truth, the whole truth, and
5 nothing but the truth?

6 THE WITNESS: I do.

7 COURT CLERK: Thank you much. Please have a
8 seat.

9 Would you please state and spell your full
10 name for the record.

11 THE WITNESS: My name is Lyn Vijayendran,
12 L-Y-N, last name is V, as in Victor,
13 I-J-A-Y-E-N-D-R-A-N.

14 THE COURT: All right, Ms. Vijayendran. Is
15 your last name hyphenated.

16 THE WITNESS: It is not, no.

17 THE COURT: Um, Ms. V., the attorneys will ask
18 you questions. I might have some questions. Um, if
19 you don't understand a question, it's okay to say, I
20 don't understand, ask it a different way.

21 The court reporter is taking down every word
22 we say and we can make her job easier by speaking
23 slowly and only one person at a time. And it's also
24 easier for her ~~if we use real words like "yes" or "no"~~
25 instead of sounds like "nuh-huh" or "uh-huh" or nods of
26 the head. She can't take that down.

27 MR. CLARK: Your Honor, I have a request of
28 the prosecutor that we have an offer of proof as to the

1 purpose of this testimony. I'm concerned about some
2 issues.

3 THE COURT: Can I have an offer of proof?

4 MS. FILO: Sure. Your Honor, I believe that
5 Ms. Vijayendran took a statement from the very first
6 witness that testified, um, B., and gave a statement to
7 Ms. Vijayendran under 160, and I would offer it to the
8 court for that purpose.

9 THE COURT: All right. Um, why don't you try
10 to lay the foundation for the --

11 MR. CLARK. I have a further concern.

12 THE COURT: Go ahead.

13 MR. CLARK: I believe that, potentially, I
14 don't know who's obligation it is, but this witness has
15 a potential Fifth Amendment privilege. I think she
16 needs to be apprised of that and may need counsel.

17 THE COURT: Based on what?

18 MR. CLARK: Based on the fact -- well, I think
19 as an officer of the court I can make that
20 recommendation. I could do it at the Bench.

21 THE COURT: Keep that thought. Would you wait
22 outside in the hallway for a moment?

23 THE WITNESS: Sure.

24 THE COURT: All right. And the representation
25 is that this witness might have criminal liability.
26 The only ones I see with any frequency is giving a
27 false statement or a failure to report under 11166 by a
28 mandatory reporter. Is that it or is there some other

1 issue that you think gives this witness criminal
2 liability?

3 MR. CLARK: Yes.

4 THE COURT: What is it?

5 MR. CLARK: The second, that she did not
6 report the potential allegation that, um, that I
7 believe, or, I guess I'm concerned that she could be a
8 criminal defendant and she should be apprised that she
9 would have the right to counsel. Um, she did not
10 report something as required by the, potentially
11 required by the Penal Code section. Unless she's given
12 immunity, I think she should be apprised of her Fifth
13 Amendment privilege.

14 THE COURT: Well, 11166 provides that a
15 mandatory reporter -- which, of course, includes all
16 educators -- um, must report to, basically, C.P.S. or
17 the police whenever the mandated reporter, in his or
18 professional capacity over or within the scope of his
19 or her employment, has knowledge of or observes a child
20 who the mandated reporter knows or reasonably suspects
21 that has been the victim of child abuse or neglect.
22 The mandated reporter shall make an initial report to
23 the agency immediately or as soon as practicably
24 possible by telephone, and the mandated reporter shall
25 prepare and send, fax, or electronically transmit a
26 follow-up report within 36 hours. Um, that's all it
27 says about timing. And I've already heard from the
28 previous witness.

1 I was, frankly, waiting for the shoe to drop
2 on this one, um, that -- just a moment.

3 She made a report to the Child Protective
4 Services later that day.

5 MR. CLARK: Your Honor, this is a completely
6 different issue. You wouldn't know that. But I don't
7 know that at this point I need any report. I feel it's
8 the prosecutor's duty here to -- if they're going to be
9 seeking information which could lead to criminal
10 prosecution, I think you have to put the witness on
11 notice of that. I made my record.

12 If you -- you know, if the court wants to do
13 it sua sponte, that's another issue. I'm going -- if
14 she does invoke her right, I will ask that her
15 testimony be stricken.

16 THE COURT: Well, the threshold issue to
17 decide is if there is a colorable claim, um, that she
18 needs the Fifth Amendment.

19 MR. CLARK: I'd have to defer.

20 MS. FILO: I think the appropriate thing to do
21 at this point is to make an offer of proof to the
22 court. Um, and what I can tell you is Ms. Vijayendran
23 was the Principal in the fall of 2011 at O.B. Whaeley,
24 um, she had a conference of some sort or a conversation
25 of some sort with B., who is the victim identified in
26 count one of our Complaint, um, and she took two and a
27 half pages of notes with respect to that conversation,
28 almost three pages. I would be more than happy to

1 submit those to the court.

2 I think it is actually the court's
3 determination as to whether or not she has Fifth
4 Amendment privileges, um, and I'd be happy to submit
5 information to the court and let the court decide if,
6 um, the court believes there was a colorable
7 description of child abuse that would trigger a
8 mandatory reporting.

9 THE COURT: Well, perhaps I'm confusing
10 myself. The previous witness testified that she called
11 C.P.S. in January of this year; is that correct?

12 MS. FILO: That's correct.

13 THE COURT: This statement was several months
14 before?

15 MS. FILO: Correct.

16 THE COURT: I'm confused. And is there any
17 representation from the People as to whether or not
18 this witness complied with the, with the provisions of
19 Penal Code Section 11166?

20 MS. FILO: I do not believe that this witness
21 made any report to any law enforcement agency. She did
22 violate her duty.

23 THE COURT: And the next question is, has she
24 been offered immunity?

25 MS. FILO: No.

26 THE COURT: It's a misdemeanor. You don't
27 require my sign off on it?

28 MS. FILO: No. She has not been offered

1 immunity.

2 THE COURT: Okay. Can you tell me anything
3 about the status of the D.A.'s office? You only have
4 a year because it's a misdemeanor.

5 MS. FILO: That's correct. I can tell you
6 that, um, the District Attorney's office has made no
7 decision with respect to filing charges.

8 THE COURT: Well, that changes things. Um,
9 the fact that it was a separate conversation, now that
10 I understand it, and the fact there was a requirement
11 to report and the fact that the People have made no
12 decision, I think supports Mr. Clark's argument that I
13 need to advise her and find a Public Defender somewhere
14 in the building to talk to her. Shall we defer her
15 testimony until tomorrow morning?

16 MS. FILO: That would be preferable, I think,
17 just for logistics, yes.

18 THE COURT: Go ahead.

19 MR. CLARK: I would -- are we going to
20 admonish her and tell her?

21 THE COURT: I'm not going to tell her anything
22 until she has either an A.D.O. or I.D.O. or a P.D.
23 That's what they do to give her some legal advice.

24 MS. FILO: As a general rule, the court would
25 make some finding on the record there's at least the
26 potential need for legal counsel.

27 THE COURT: I make that finding based on the
28 information I have.

1 MS. FILO: All right.

2 MR. CLARK: I think -- I don't mean to
3 disrespect the court. Are we going to tell her to go
4 get a lawyer?

5 THE COURT: I'm going to advise her to come
6 back in the morning, and I'm going to ask Ms. Avalos to
7 do what she does and try to find a lawyer on the public
8 payroll willing to help out for free and advise her of
9 her options.

10 MR. SCHUMB: Is it appropriate for us to --

11 THE COURT: I don't think you can because I
12 think she needs independent counsel.

13 MR. SCHUMB: -- talk to her about the need for
14 independent counsel?

15 THE COURT: I prefer independent counsel.
16 And, fortunately, we're a very big county if we could
17 just find one who's not in trial at the time. We'll
18 try to find one now, but don't get your hopes up.

19 Um, would you ask Ms. Vijayendran to sort of
20 standby? Is there another witness we can take?

21 MS. FILO: There's not. She's my last witness
22 of the day.

23 THE COURT: Bear with us for a moment while
24 Ms. Avalos tries to find an attorney.

25 I would like to ask counsel, this is three-day
26 time estimate. Do you think realistically we will
27 finish tomorrow?

28 MS. FILO: Yes.

1 MR. SCHUMB: Absolutely.

2 MS. FILO: I think we have, um, probably two
3 witnesses in the morning. I expect, um, to put on at
4 least one, maybe three, at least one officer, maybe two
5 police officers, and D.N.A. evidence from the crime
6 lab.

7 THE COURT: All right. If it goes into
8 tomorrow, we're going to have a problem.

9 I would appreciate if you can talk with
10 Mr. Chandler and see, if it becomes necessary, if he's
11 willing to waive his right to a continuous prelim and
12 finish whatever we have on Thursday of next week.

13 MR. CLARK: I'm sure we can discuss that with
14 him.

15 THE COURT: I believe tomorrow afternoon I
16 have a homicide case that I absolutely have to swear a
17 jury in.

18 MR. CLARK: Tomorrow or Thursday?

19 THE COURT: Tomorrow's Thursday. I mean, if
20 it goes into Thursday, we'll have a problem. That's
21 why I'm asking for your help.

22 MS. FILO: Not a chance.

23 MR. SCHUMB: We'll finish Ms. A. tomorrow.

24 MS. FILO: Can we go off the record?

25 MR. CLARK: We'll finish Ms. A. tomorrow. Who
26 else do we have?

27 MS. FILO: Officer Chubon, potentially Officer
28 Pierce, if we need him, and the D.N.A. evidence.

1 MR. CLARK: Okay.

2 THE COURT: Then we also have the defense.
3 They plan on calling officers.

4 MR. CLARK: Ms. Filo is actually calling the
5 same people that we may be, and I think we can get
6 through it.

7 THE COURT: Please talk to Mr. Chandler. It's
8 his decision. Either way, I need to know so I know
9 what to tell my supervisor. Thank you.

10 MS. FILO: Let me just tell the witness what's
11 going on.

12 THE COURT: Do we have Ms. Vijayendran?

13 MS. FILO: I'm sorry, did you want her too?

14 THE COURT: Yes.

15 All right. Ms. Vijayendran, if you could just
16 step up to the microphone in the middle of the room
17 there. This courtroom is sort of the best in high
18 technical stuff and low technical architecture.

19 Based on what counsel told me, I have
20 determined it is legally advisable for you to talk to
21 an attorney. We have one for you. We will get one for
22 you tomorrow morning. We have, um, the Public
23 Defender's office, the Alternate Public Defender's
24 office, and the Independent Defenders office. Um, an
25 attorney can talk to you about that and then you'll
26 decide what you want to do next. I'm ordering you to
27 return here at 9 o'clock tomorrow, here 9 o'clock
28 tomorrow and we'll see if we can't get somebody for you

1 to talk to you. In the meantime, remember don't, um,
2 discuss your testimony with anyone. Um, do you have
3 any questions about this procedure?

4 THE WITNESS: No.

5 THE COURT: All right, thank you very much.
6 We'll see you at 9 o'clock tomorrow.

7 Is there anything else either counsel wants to
8 put on the record?

9 MR. SCHUMB: Your Honor, we'd probably like to
10 move in Exhibits A and B at this time.

11 THE COURT: Sure. Is there any objection?

12 MS. FILO: No, Your Honor.

13 THE COURT: All right.

14 (Defendant's Exhibits A and B are admitted.)

15 THE COURT: Do the People, while we're on the
16 subject, also want to move in People's 1 and 2?

17 MS. FILO: We withdraw 2 at this point. We
18 haven't used it. And I think it's actually the same as
19 Defense Exhibit B.

20 THE COURT: Is there any objection to People's
21 1 and 3 being admitted?

22 MR. SCHUMB: No.

23 MR. CLARK: No.

24 (People's Exhibit 1 and 3 are admitted.)

25 THE COURT: People's 3, can I see?

26 MR. SCHUMB: Is it the same as my B?

27 MS. FILO: Yes.

28 THE COURT: People's 1 is the same as your A.

1 MS. FILO: I can withdraw 2 if that's easier.
2 MR. SCHUMB: I think the witness has referred
3 to it.
4 MR. CLARK: Judge, for the stickies that are
5 on these two, we can, we'll just tape them on there and
6 leave them on there for, in perpetuity.
7 THE COURT: Thank you. Anything else we need
8 to put on the record before we start up again
9 tomorrow?
10 MR. SCHUMB: No, Your Honor.
11 MS. FILO: No, Your Honor.
12 THE COURT: Thank you very much.
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1 State of California)
 2 County of Santa Clara) SS.

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4 I, Denise M. Nebolon, do hereby certify that:

5 I am an Official Court Reporter of the
 6 superior court of the State of California in and for
 7 the County of Santa Clara; and that, as such, I
 8 reported in stenotype and thereafter transcribed
 9 through computer-aided transcription as herein appears
 10 the above proceedings and that the same is a full,
 11 true, and correct transcription of said stenotype as
 12 reported by me to the best of my ability.

13 I further certify that I have complied with
 14 Code of Civil Procedure Section 237(a)(2) in that all
 15 personal juror identifying information has been
 16 redacted, if applicable.

17 Dated: June 3, 2012



Denise M. Nebolon, CSR 9344

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